



November 14, 2024
Revision No. 1: December 16, 2024
Proposal No.: MWKELRTX.001C

Mr. Rick Hardcopf, PE
City Engineer, City of Keller
1100 Bear Creek Parkway
Keller, Texas 76248

Subject: Proposal for Professional Engineering and Construction Phase Services for 1.0 million Gallon (MG) Keller Smithfield Elevated Storage Tank (EST) rehabilitation

Dear Mr. Hardcopf:

As requested, Kleinfelder Inc. (Kleinfelder) is pleased to submit this proposal for professional engineering and construction phase services for rehabilitation of the 1.0 MG Keller Smithfield EST owned and operated by the City of Keller, Texas located at 540 Keller Smithfield Road S., Keller, Texas 76248. The following sections provide our understanding of the project and our proposed scope of services, related budget, and schedule to assist the City of Keller.

PROJECT UNDERSTANDING

The project aims to restore and enhance the functionality and structural integrity of an existing 1.0 MG EST. This comprehensive project involves a thorough review of assessment of the tank's condition presented in Preliminary Evaluation And Report (PEAR) prepared by KLF in July 23, 2021, followed by the design and construction management of the recommended strategic repairs, upgrades, and maintenance activities to ensure its continued performance and longevity. A summary of our project understanding is outlined below:

1. Initial Assessment:
 - Examine the current PEAR report authored by KLF in July 23, 2021 and validate the inspection and evaluation of the tank's present state for design purposes.
2. Coating:
 - Interior and exterior coating.
3. Structural Repair
 - Replace compression ring.
4. Safety & Security
 - Install confined space signage (5)
 - Install lock on the hatch (2) & Install gasket on the hatch (1)
 - Replace hatches to meet TCEQ.

- Remove & replace dry access tube ladder and fall protection system.
 - Remove & replace water access ladder and fall protection system.
 - Remove & replace interior ladder and fall protection system.
5. Operation
 - Blast and recoat the piping and overflow weir.
 6. Site repairs
 - Remove & repair sidewalk.
 - Regrade site around tank to resolve minor erosion issue.
 7. Electrical & Instrumentation
 - Maintain intrusion alarm switches.
 - Replace the PLC since the existing PLC is no longer supported by the manufacturer. Replace the back panel in the existing cabinet with new internal wiring and new PLC.
 - Replace site lightning.
 - Replace FAA obstruction light control panel with newer LED type.
 - Provide support for all lightning and conduits to avoid them being supported off the ladder.
 - Provide new generator, including ATS, foundation and conduit.
 - Install GFI/WP receptacles near ladder on each platform and at top of access tube.

PURPOSE AND SCOPE OF BASIC SERVICES

This proposal is to provide design document preparation, bidding assistance and construction phase services for the rehabilitation of the 1.0MG Keller Smithfield EST. The following scope of services describes the detailed tasks that will be performed by Kleinfelder to successfully execute this project.

Task 1 – Project Management Services

Kleinfelder’s project team will interface with City of Keller’s project manager on a regular basis. Regularly scheduled meetings (up to six progress meetings) & a kick-off meeting will be conducted by the project team to review schedule, budget, and project coordination issues.

Manage the project scope of work for a period of twelve (12) months, including monitoring schedule and budget, making staff assignments to maintain the project schedule, and general management and coordination of project staff and the Client as described below:

- Monthly Invoice. Prepare and submit monthly invoices including budget status, and expenditures incurred during the previous month.
- Upon issuance of Notice to Proceed, Kleinfelder will develop a health and safety plan, review available information provided by the City of Keller (Client), and prepare a project schedule.

Task 1.1 – Develop Health and Safety Plan

Kleinfelder will prepare a Health and Safety Plan for the proposed field work, including a list of project personnel responsible for health and safety, hazard analysis for the anticipated activities, required personal protective equipment, contingency measures, and forms. Field personnel will be briefed on the plan.

Task 1.2 – Review Available Information and Site Visit.

Kleinfelder will review the Preliminary Evaluation and Assessment Report (PEAR) prepared by Kleinfelder in 2021. We will also conduct a site visit to confirm any changes in the site conditions prior to moving forward in the design phase. We will conduct survey and provide following services:

- Topo of +/- 1 acre of project site elevated 1.0MG water tank.
- Horizontal & vertical control will be established for the project.
- Field work to obtain existing surface improvements and elevations in “fenced” area.
- Existing elevations will be shot and shown on the survey.
- DWG CAD files and pdf plots of topo showing existing contours and improvements will be provided upon completion of survey.
- Site photographs
- Provide an updated existing conditions plan.

The City’s responsibilities include:

- Provide access to the project site for the Project Team.
- Open electrical panels, guards, or hatches for Kleinfelder to visually evaluate electrical components.
- Operate tank electrical system (i.e., turning the power off/on to the pumps) if needed.
- Provide As-built /Record Drawings applicable to the project.

Task 2 – Design Phase Services

After reviewing the PEAR and existing information, our team (Kleinfelder, Gupta Associate Inc (Electrical Sub) and Fort Worth Surveying, Inc. (Surveyor Sub) will produce a set at 60% and 90% completion levels for city review and finalize 100% design submittal that will include design plans, specifications, and opinion of probable cost estimate for the rehabilitation of the Keller Smithfield EST.

Task 2.1 – Preparation of Plans

Design plans, specifications and contract documents shall be submitted to the City of Keller at 60%, 90% and final completion levels. A minimum of two (2) week will be allotted for internal review of the documents by the City of Keller before proceedings to the next level. A final signed and sealed set of bid documents will be submitted to City for bidding. Kleinfelder will provide internal QA/QC through its project review guidelines at each level of design.

Task 2.2 – Design Review Submittals

Submittal	Drawings	Specifications	Opinion of Cost
60%	Plans, Sections, and Preliminary Details	Draft	Preliminary
90%	Plans, Sections, and Details	Draft	90%
Bid Documents	Bid Ready	Bid Ready	Final

Kleinfelder will advertise the project on Civ Cast for bidding.

Task 2.3 – Opinion of Probable Construction Cost

Prepare updated opinion of probable construction costs (OPCC) at 60%, 90% and final submittal stage. A final OPCC will be submitted to the city with bid documents.

Task 2.4 – Electronic Deliverables

One complete electronic copy (pdf format) of the deliverables will be provided. Kleinfelder will respond to any comments received from the city staff on the draft deliverables and produce the final version of the deliverables.

The City's responsibilities include:

- Review and provide comments on the 60%, 90% and final Submittals.

Task 3 – Bid Phase Services

Kleinfelder will provide Bid Phase services to include the following:

Task 3.1 – Bid Phase Services

Kleinfelder will attend the pre-bid meeting for the project and prepare up to two (2) addendums. In addition, Kleinfelder will attend the bid and assist the City of Keller in tabulating and comparing the bids, and evaluating bidder qualifications based on reference verification, reproduce, and distribute contract documents to the successful bidder, and maintain a list of bidders if needed. It is assumed that the City of Keller will be responsible for advertising and costs related to public bid advertisements. Kleinfelder will submit the electronic bid documents to the City and assist the City with up to one (1) pre-bid meeting to answer the questions from the prospective Bidders.

Task 3.2 – Preparation of Conformed Documents

Kleinfelder will compile the information from the addendums and prepare the conformed set for construction documents; one electronic copy will be provided to the city.

Task 4 – Construction Administration Services

Task 4.1 – Construction Coordination Meetings

Kleinfelder will attend the pre-construction meeting. Kleinfelder will attend construction meetings with the contractor, subcontractors, and City staff on a monthly basis to discuss the progress of the project. Attendance at up to six (6) meetings is included as a part of this scope.

Task 4.2 – File Preparation

Kleinfelder will maintain a file of shop drawings with review comments, RFIs, change orders, and other documents.

Task 4.3 – Shop Drawing Review

Review technical documents submitted by contractor. Submittals will be reviewed by Kleinfelder for general conformance to the contract documents. Subsequent to Kleinfelder’s review, we will return the submittal to the contractor. Kleinfelder will maintain a log of shop drawings that have been submitted, and the disposition. Our fee is based upon an estimated twenty (20) shop drawings submittals.

Task 4.4 – Requests for Information

Review and coordinate with City staff and respond to contractor’s request for information (RFIs). When appropriate, suggestions and alternatives will be provided to the contractor and/or City staff. A log of RFIs will be maintained. Up to ten (10) RFIs are included as a part of this contract.

Task 4.5 – Contract Change Orders

Analyze and make recommendations to City staff regarding contract change orders during the construction. Change orders will be evaluated from an engineering perspective. Up to two (2) change order requests are included as a part of this contract.

Task 5 – Record Drawings

Prepare record drawings based on information/red lines supplied by the contractor. One electronic copy of record drawings after construction completion will be prepared.

Task 6 – Construction Observation Phase

During the rehabilitation construction phase, Kleinfelder will provide a qualified project representative to perform periodic field visits and construction observation services. Each trip consists of 5 hours per trip, including travel and reporting, 3 trips a week for four (4) consecutive months. During the field visits, the project representative will observe the prime contractor’s progress and evaluate the overall activities and progress of the project. In a proactive manner, we intend to identify potential issues that may impede project progress or potentially add cost to the successful completion of the project. If there are any issues identified, they will be discussed with the City to manage both the schedule and cost through project completion. Kleinfelder will provide field reports within seven (7) business days. The actual cost for field inspection may vary from our estimate due to factors beyond our control. We will coordinate closely with the city during the construction and keep you apprised of the actual effort expended versus our projections.

ADDITIONAL SERVICES/ASSUMPTIONS

The following services are not included in the *Scope of Basic Services* and will be considered as *Additional Services*, if and when they are required or requested:

- Package to TCEQ for any exception.
- Any Computational Fluid Dynamics (CFD) modeling for the tank mixing system.
- The services of specialty sub-consultants or other special outside services other than those described in the above Scope.
- Assessment of third-party communication systems installed on the tanks.

- Costs, including equipment replacement, associated with decontamination of personnel/equipment as a result of encountering hazardous/toxic materials at site.
- Meetings, other than those described in the above Scope.
- Additional report copies or submittals; or report revisions after final submission.
- Additional or increased insurance coverage (if available) other than described in the Services Agreement.
- Coordination with regulatory agencies other than described in the above Scope.
- Any other services not specifically included in the above Scope.
- No Subsurface Utility Engineering (SUE) work is included.
- No record research included.
- No boundary work or property delineation included.

If Kleinfelder is obligated to prepare for or appear in litigation or arbitration proceedings on behalf of the Owner, Kleinfelder shall receive additional compensation to be mutually agreed upon.

COMPENSATION

Kleinfelder proposes to perform Tasks 1 to 5 for a total lump sum fee in the amount of **\$227,000**. The lump sum fees include applicable labor, overhead, and expenses. Task 6 will be performed on time and materials basis for a total estimated fee of **\$63,000**. The fee breakdown by Task is listed below.

Task 1 – Project Management	\$ 22,000
Task 2 – Design Phase Services	\$ 148,500
Task 3 – Bid Phase Services	\$ 17,000
Task 4 – Construction Administration Services	\$ 31,500
Task 5 – Record Documents	\$ 8,000
Total Lump Sum Fee	\$ 227,000
 Task 6 – Construction Observation Services (4 months)	 \$ 63,000
Total Estimated Fee	\$ 290,000

The fee will not be exceeded without prior approval. The construction observation service is based on the resident project representative providing periodic observation for 5 hours a day including travel and report, 3 days a week for the construction period of 4 consecutive months.

Invoices will be issued on a monthly basis. The net cash amount of this invoice is payable on presentation of the invoice. The City and Kleinfelder may subsequently agree in writing to provide for additional services to be rendered under this agreement for additional, negotiated compensation.

ANTICIPATED SCHEDULE

A project schedule will be prepared upon notice to proceed.

LIMITATIONS

Our work will be performed in a manner consistent with that level of care and skill ordinarily exercised by other members of Kleinfelder's profession practicing in the same locality, under similar conditions and at the date the services are provided. Our conclusions, opinions and recommendations will be based on a limited number of observations and data. It is possible that conditions could vary between or beyond the data evaluated. Kleinfelder makes no guarantee or warranty, express or implied, regarding the services, communication (oral or written), report, opinion, or instrument of service provided.

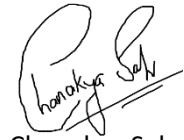
This proposal is valid for a period of 30 days from the date of this proposal unless a longer period is specifically required by The Owner in which case that time frame will apply. This proposal was prepared specifically for The Owner and its designated representatives and may not be provided to others without Kleinfelder's express permission.

We appreciate the opportunity to provide you with this proposal and look forward to working with you on this project. If you have any questions or wish to discuss, please contact us at 972.868.5900.

Sincerely,

KLEINFELDER, INC.

Texas Registered Engineering Firm F-16438

Handwritten signature of Chanakya Sah in black ink, with the name 'Chanakya Sah' written in small text below the signature.

Chanakya Sah, PE, CFM
Project Manager

Handwritten signature of Rob Clark in blue ink.

Rob Clark, PE
Director - Public Works & Water Resources

CLIENT MASTER SERVICES AGREEMENT

DFW24P174795R1

This Agreement is made on:

- Between** City of Keller with offices at 1100 Bear Creek Parkway, Keller, Texas 76248 (**Client**)
- And** Kleinfelder, Inc. with offices at 7805 Mesquite Bend, Suite 100, Irving, Texas 75063 (**Kleinfelder**).

Recitals

- A. Client wishes to appoint Kleinfelder to provide certain services (the **Services**, as defined below) required by Client or Client's agreement with the Owner for one or more projects on a Work Order basis and on the terms and conditions contained in this Agreement.
- B. Kleinfelder has agreed to perform the Services on the terms and conditions contained in this Agreement.

Now it is agreed as follows:

1. CONTENTS OF AGREEMENT

- 1.1 The parties agree that the documents listed in 1.1(a) through (e) constitute the "**Contract Documents**" of this Agreement. To establish obligations and resolve ambiguities in the Contract Documents, the following order of precedence will prevail:
- (a) first, amendments and Change Orders issued in accordance with this Agreement;
 - (b) second, Work Orders (Appendix A, as defined below);
 - (c) third, Kleinfelder's Proposal, dated 12/16/2024, which the Client acknowledges receipt and confirms understanding of, and agreement with the contents thereof, in full (Appendix B), or Kleinfelder's Proposals subsequently issued and referenced, attached or incorporated into Work Orders;
 - (d) fourth, this Agreement; and
 - (e) fifth, those portions of the Client's agreement with Owner dated N/A (**Prime Agreement**), if and as applicable to Kleinfelder and incorporated as provided in clause 1.4 (Appendix C).
- 1.2 To the extent of any inconsistency between this Agreement and any Prime Agreement, the provisions of this Agreement will always prevail.
- 1.3 Any pre-printed terms and conditions on forms used by either party in the administration of this Agreement are void and do not supplement or replace the terms and conditions of the Contract Documents of this Agreement.
- 1.4 Kleinfelder agrees to be bound to Client in the same way Client is bound to (**Owner**), to the extent the provisions referenced at clause 1.1(e) are applicable to the Services under a given Work Order and provided those provisions of the Prime Agreement are expressly identified and furnished to Kleinfelder prior to entering into the Work Order.

2. APPOINTMENT AND SCOPE OF SERVICES

- 2.1 This Agreement anticipates the execution of various written work orders (in the form of Appendix A) which the parties agree will specify the scope of Services to be performed (**Services**) and Client's project for which the Services will be performed (**Project**), the location of Client's Project for providing the Services (**Site**), the time period for performance, the agreed fees and additional provisions, if any, applicable to such Services (**Work Orders**).
- 2.2 By executing this Agreement, Client does not guarantee any future work, nor does Kleinfelder commit to performing any specific future Work Order.

3. STANDARD OF CARE

- 3.1 Kleinfelder will perform its Services in a manner consistent with that level of care and skill ordinarily exercised by other members of Kleinfelder's profession practicing in the same locality, under similar conditions and at the date the Services are provided.
- 3.2 Kleinfelder makes no representation, guarantee or warranty, express or implied, regarding the Services, or any communication (oral or written), certification, report, opinion, or Instrument of Service provided pursuant to this Agreement.
- 3.3 Kleinfelder will not be responsible for constant or exhaustive inspection of the work, for the means, methods, techniques sequences or procedures of construction, or for the safety procedures employed by any party other than its own employees, subconsultants and subcontractors.
- 3.4 No level of assessment can conclusively determine whether a property or its structures are completely free of geotechnical hazards or hazardous substances (including but not limited to mold). Client represents that it has carefully reviewed the limitations described in the Proposal.
- 3.5 Even with diligent observation, some defects, deficiencies, or omissions may occur. Before exercising any other remedy for any alleged breach by Kleinfelder of this Agreement, Client will direct Kleinfelder in writing to re-perform any defective Services within twelve (12) months after completion of the Services.
- 3.6 Kleinfelder will only sign certifications relating to the Services if Kleinfelder agreed in writing prior to the commencement of the Services to provide such certifications. Such certifications are statements of professional opinion only.

4. KLEINFELDER'S RESPONSIBILITIES

- 4.1 Kleinfelder will perform the Services as an independent contractor and not as an agent or employee of Client. Nothing in this Agreement creates any special relationship or fiduciary duty.
- 4.2 Kleinfelder will, as reasonably directed by Client or its authorized agent:
- (a) provide qualified staff to perform the Services;
 - (b) maintain records of Project activities and costs for no more than three years from its completion of the Services;
 - (c) coordinate to the extent reasonably possible with Client's employees, contractors, consultants so as not to impede the progress of the Project; and
 - (d) require its personnel to maintain a safe, clean and orderly work environment.

5. TERM AND TERMINATION

- 5.1 This Agreement will commence on the date of its execution, except as to any Services authorized by Client and performed by Kleinfelder beforehand, and will continue in effect for two years or until terminated by either party or extended for an additional two years by mutual written agreement of the parties.
- 5.2 Either party may terminate this Agreement or any Work Order at any time by providing not less than ten (10) days' written notice to the other party.
- 5.3 Notwithstanding the termination or expiry of this Agreement, the terms of this Agreement will survive and continue to apply to all Work Orders signed by both parties prior to the Agreement's effective termination or expiry date, and until all of the rights and obligations of both parties have been fulfilled.
- 5.4 Within fifteen (15) days from termination Client will pay Kleinfelder on demand for all Services rendered and costs incurred through to the date of any termination and for all reasonable costs and expenses incurred by Kleinfelder in effecting the termination, including, without limitation, non-cancellable commitments, fixed cost components and other demobilization costs.

6. COMPENSATION

- 6.1 In consideration for undertaking the Services, the Client shall pay to Kleinfelder the sum specified in each Work Order in payments in accordance with the terms of each Work Order and the payment provisions of this Agreement.
- 6.2 Client agrees to provide any special invoicing requirements to Kleinfelder in advance of signing this Agreement, to which additional charges may apply.
- 6.3 The proposed fees set forth in this Agreement shall be open for acceptance for ninety (90) days from the above date. If the Agreement is signed after that date, the proposed fees may be adjusted prior to commencement of Services. The hourly rates charged for Kleinfelder's Services are adjusted annually in January of each year to reflect changes in the various elements that comprise such hourly rates. All adjustments will be in accordance with generally accepted accounting practices as applied on a consistent basis by Kleinfelder and consistent with Kleinfelder's overall compensation practices and procedures. Kleinfelder reserves the right to periodically adjust its fee schedule.
- 6.4 Kleinfelder will generally submit its invoices to Client on a monthly basis. Client must pay all invoices within thirty (30) days from the date of invoice, with interest at the rate of one and one-half percent (1 1/2 %) per month payable on all outstanding payments. Interest on all outstanding payments will be charged from the initial date of invoice.
- 6.5 Kleinfelder may suspend performance of Services under this Agreement until it has been paid in full for all outstanding payments, including interest charges.
- 6.6 Kleinfelder will be entitled to recover from Client on demand all expenses incurred (including all legal costs and expenses) in recovering any outstanding payments from Client.
- 6.7 All travel will be invoiced at cost and reimbursed by Client. All travel required under this Agreement is subject to the terms, conditions and applicable rates set forth in the U.S. Federal Travel Regulations.

7. INSURANCE

- 7.1 Kleinfelder will maintain during the term of this Agreement worker's compensation, commercial general liability, automobile liability Insurance and professional indemnity insurance coverage.

Client will maintain during the term of this Agreement adequate insurance coverage and will require and verify any contractors or parties it hires to have adequate insurance coverage. Client agrees that failure to comply with this clause will invalidate any indemnity provided by Kleinfelder under clause 12.1.

8. CHANGES TO SCOPE OF SERVICES

- 8.1 Client or Kleinfelder may request to modify the scope of Services as set out in any Work Order, whereon both parties agree to negotiate in good faith and execute a written Change Order. A **Change Order** is an amendment to this Agreement or to a Work Order that modifies the Services and specifies the following:
- (a) a change in the terms and conditions of Services;
 - (b) an adjustment in the schedule for performance; and
 - (c) the amount of adjustment in Kleinfelder's compensation.
- 8.2 Kleinfelder will treat as a Change Order any written or oral Client order (including directions, instructions, interpretations, or determinations) which request changes in the Services. Kleinfelder will give Client written notice within a reasonable time of any resulting adjustment in the schedule and compensation. Unless Client objects in writing within 5 business days, the proposed terms of the Change Order with the adjustment in the schedule and price shall become a part of this Agreement.
- 8.3 If Client and Kleinfelder cannot agree upon an equitable adjustment in the schedule and compensation, and Kleinfelder does not sign the Change Order, the disagreement shall be treated as a Dispute under clause 18.

9. FORCE MAJEURE

- 9.1 Kleinfelder will not be liable for delay or failure to perform its Services caused directly or indirectly by circumstances beyond its control, including but not limited to, acts of God, fire, flood, war, sabotage, accident, labor dispute, shortage, government action or inaction, changed conditions, delays resulting from actions or inactions of Client or third parties, Site inaccessibility or inability of others to obtain material, labor, equipment, or transportation.
- 9.2 Should any of the preceding circumstances occur, then the date for completion or any other milestone date shall be adjusted for the delay in accordance with clause 8, provided Kleinfelder reports the delay to Client within a reasonable time of discovery.

10. INSTRUMENTS OF SERVICE

- 10.1 All data, reports, drawings, plans, or other documents (or copies) provided to Kleinfelder by Client for the purposes of this Agreement will, at Client's written request, be returned upon completion of the Services and payment in full for all Services rendered. Client agrees that Kleinfelder may retain one copy of all such documents.
- 10.2 Client agrees:
- (a) all reports, drawings, plans, documents, software, source code, object code, boring logs, field data, field notes, calculations, estimates, laboratory test data and other similar data, documents and work products (or copies thereof) in any form prepared by Kleinfelder pursuant to this Agreement are instruments of service (**Instruments of Service**), not products;
 - (b) Kleinfelder will retain exclusive ownership, copyright and title to all Instruments of Service, and Client has no rights to incomplete or partial data;
 - (c) all opinions, certifications, communications (oral or written) or Instruments of Service furnished to Client are intended for the benefit of Client for the specific purposes stated herein and therein, are not intended

- to inform, guide, or otherwise influence any entities or persons other than Client in relation to the Project, and are not intended or represented to be suited for reuse by Client or others, and;
- (d) reuse without the specific prior written consent of Kleinfelder will be at the user's sole risk and without Kleinfelder liability, and Client agrees (i) to remove Kleinfelder's and Kleinfelder's consultants' names and seals therefrom, and (ii) to defend, indemnify and hold harmless Kleinfelder and Kleinfelder's contractors, consultants, affiliates, directors and employees from and against all losses, damages and liabilities (including all legal expenses) in connection with the unauthorized use.

- 10.3 Any requests by third parties for reliance upon any communication (oral or written), certification, report, opinion, or Instrument of Service provided by Kleinfelder pursuant to this Agreement will be subject to approval at Kleinfelder's sole discretion and to additional fees, terms and conditions.

11. CLIENT'S RESPONSIBILITIES

- 11.1 Client agrees to provide and discuss with Kleinfelder on an ongoing basis throughout all available material, data, and information pertaining to the Services, including, without limitation, (i) the composition, quantity, toxicity, or potentially hazardous properties of any material known or believed to be present at any Site, (ii) any hazards that may be present, (iii) the nature and location of underground or otherwise not readily apparent utilities, (iv) summaries and assessments of the Site's past and present compliance status, (v) the status of any filed or pending judicial or administrative action concerning the Site or Project, and (vi) Client records (in electronic format where possible) for such data as benchmarks, plans, maps, and property ownership.
- 11.2 Client will ensure the cooperation of Client's employees, contractors and consultants with Kleinfelder.
- 11.3 Client acknowledges and agrees that Kleinfelder is entitled to rely upon the accuracy and completeness of any information given by Client, its employees, contractors and consultants.
- 11.4 Client will provide reasonable assistance to obtain data and records concerning the Site or Project in the possession, custody or control of third parties.

12. ALLOCATION OF RISK AND INDEMNITIES

- 12.1 Subject to the limitation of liability provisions of this Agreement, Kleinfelder indemnifies Client against all liabilities, losses or damages caused by the negligence or other fault of Kleinfelder and its employees, agents, representatives, subcontractors, and any other party for whom Kleinfelder is legally responsible (**Kleinfelder Parties**), but only to the extent such liabilities, losses or damages are caused by the negligence or other fault of the Kleinfelder Parties when compared to the negligence or other fault of all other persons and entities. If California law applies to this Agreement, the parties also expressly agree that this indemnity provision does not include, and in no event shall Kleinfelder be required to assume, any obligation or duty to defend any claims, cause of action, demands, or lawsuits in connection with or arising out of this Project or the Services rendered by Kleinfelder. This clause 12.1 is not intended to and will not in any way be limited by any insurance coverage available to Client under any Kleinfelder insurance policy.
- 12.2 Client indemnifies Kleinfelder against all liabilities, losses or damages caused by the negligence or other fault of Client and its employees, agents, representatives, subcontractors, and all other parties for whom Client is legally responsible (**Client Parties**), but only to the extent such liabilities, losses or damages are caused by the negligence or other fault of Client Parties when compared to the negligence or other fault of all other applicable persons and entities. If California law applies to this Agreement, the parties also expressly agree that this indemnity provision does not include, and in no event shall Client be required to assume, any obligation or duty to defend any claims, cause of action, demands, or lawsuits in connection with or arising out of this Project or services rendered by Client. This clause 12.2 is not intended to and will not in any way be limited by any insurance coverage available to Kleinfelder under any Client, Owner or Project insurance policy.

- 12.3 Subject to any applicable statutory limitations, the indemnity obligations in this clause 12 shall survive the expiration or termination of this Agreement.

13. LIMITATION OF LIABILITY

- 13.1 The maximum aggregate liability of Kleinfelder arising out of or related to this Agreement and all Work Orders and amendments thereto, whether based in contract or tort or otherwise in law or equity, will be limited to the greater of the compensation actually paid to Kleinfelder for the Services under all Work Orders or \$50,000, and Client hereby releases Kleinfelder from any liability above such amount. This limitation of liability includes any losses payable to Client under clause 12.1 and will apply to any and all claims.
- 13.2 This limitation of liability has been agreed after Client and Kleinfelder discussed the risks and rewards associated with the Project and the Services as well as the provision of the Services within both the obligations of this Agreement and the associated compensation. Upon written request by Client, the parties may negotiate in good faith and agree, by way of a written Change Order in accordance with clause 8 herein, to increase the amount of this liability limitation or eliminate it in exchange for payment of increased compensation to Kleinfelder.
- 13.3 As used in this clause 13, "Kleinfelder" includes Kleinfelder, its affiliates, subconsultants and subcontractors, and their respective partners, officers, directors, shareholders and employees. The limitation of liability established in this clause 13 shall survive the expiration or termination of this Agreement.

14. WAIVER OF CONSEQUENTIAL DAMAGES

- 14.1 Neither party will be liable to the other party for any special, incidental, indirect, exemplary, punitive, penal or consequential damages however arising incurred by either Kleinfelder or Client or for which either may be liable to a third party.

15. NO CONTROL OF MEANS AND METHODS OF OTHERS

- 15.1 Client agrees:
- (a) Kleinfelder will have no control over or charge of or responsibility for the construction means, methods, techniques, sequences, or procedures, or for the safety precautions and programs of Client's employees, or contractors or consultants engaged by Client in connection with the Project;
 - (b) Kleinfelder's performance of the Services does not include any job site safety obligations which may be required by or in connection with the Project or the Services or any applicable code or regulation, other than strictly in respect of its own employees; and
 - (c) Kleinfelder will not have control over or charge of the acts or omissions of any contractor or contractors' agents, employees or subcontractors.

16. SITE ACCESS

- 16.1 Client agrees to:
- (a) provide unimpeded and timely access to the Site, including any third party sites, if required;
 - (b) provide an adequate area for Kleinfelder's Site office facilities, equipment storage, and parking;
 - (c) furnish all construction utilities and utility releases necessary for the performance of the Services; and
 - (d) obtain all permits, licenses or authorizations necessary for the performance of the Services.

17. WARRANTY OF TITLE, WASTE OWNERSHIP

- 17.1 Kleinfelder will not take title to or be liable for any hazardous materials found at any Project Site. Any risk of loss with respect to all materials remains with Client or the Site owner, who will be considered the generator of such materials, execute all manifests as the generator of such materials, and be liable for the arrangement, transportation, treatment, and/or disposal of all material. All samples remain the property of Client. Client agrees to promptly, at its cost, remove and lawfully dispose of samples, cuttings, and hazardous materials.

18. DISPUTE RESOLUTION

If a dispute arises out of or relates this Agreement (**Dispute**), the parties agree to submit the Dispute to mediation pursuant to the Construction Industry Mediation Rules of the American Arbitration Association (**AAA**). The mediator will be an independent person agreed between the parties from a panel suggested by the Institute or, failing agreement, a mediator appointed by AAA. A party shall not call for mediation of any Dispute after such period of time as would bar the initiation of legal proceedings to litigate such Dispute under the laws of the state in which the Project is located.

- 18.1 Client and Kleinfelder agree that in the event of a Dispute, they will not seek recourse against individual officers, employees, directors, or shareholders of the other party.
- 18.2 A party shall not start court proceedings in relation to a Dispute until it has exhausted the procedures in this clause, unless the party seeks injunctive or other interlocutory relief.
- 18.3 If the Dispute cannot be resolved through mediation, either party may file suit in an appropriate court in the state where the Services are performed.
- 18.4 This clause survives termination or expiry of this Agreement.

19. MISCELLANEOUS

- 19.1 This Agreement is governed and construed in accordance with the laws of the state where the Services are performed. The parties hereby submit to the jurisdiction of the courts of the state where the Services are performed and waive any right to object to any proceedings being brought in those courts.
- 19.2 Waiver of any term, condition or breach of this Agreement will not operate as a subsequent waiver of the same term, condition or breach. A waiver is not valid or binding unless made in writing.
- 19.3 If any provision of this Agreement is found by a duly constituted authority to be invalid, void, or unenforceable, all remaining provisions shall continue in force.
- 19.4 This Agreement does not create, nor will it be construed to create, any benefit or right in any third party or any special relationship or fiduciary duty to third parties.
- 19.5 This Agreement constitutes the entire understanding and agreement of the parties with respect to its subject matter. It supersedes all earlier conduct, prior agreements and understandings between the parties in connection with its subject matter.
- 19.6 Client and Kleinfelder shall abide by 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, or national origin. 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, national origin, protected veteran status or disability.

- 19.7 All notices, requests or instructions hereunder must be in writing and either hand delivered to the recipient, delivered by registered mail or express mail the addresses given in this Agreement.
- 19.8 This Agreement cannot be assigned by either party without the prior written approval of the other party. Kleinfelder may subcontract performance of portions of the Services to a qualified subcontractor.
- 19.9 Any amendment or revision to this Agreement, including for the avoidance of any doubt, to any Work Order, must be in writing and signed by both parties. Any oral modification or revision of this Agreement shall not operate to modify this Agreement.
- 19.10 This Agreement may be executed in counterparts, including photo or electronic copies, which taken together, shall constitute one original document.

IN WITNESS WHEREOF, Client and Kleinfelder have caused this Agreement to be executed on the date first written above.

CLIENT:

KLEINFELDER:

By: _____

By:  _____

Printed Name: _____

Printed Name: Rob Clark, PE

Title:

Title: Director – Public Works & Water Resources

- ATTACHMENTS:** Appendix A, Sample Work Order
 Appendix B, Kleinfelder Proposal (as applicable)
 Appendix C, Prime Agreement /Client Requirements (as applicable)

APPENDIX A: WORK ORDER

Issued Pursuant to The Client Master Services Agreement effective as of _____ by and between _____ (Client) and Kleinfelder, Inc. (Kleinfelder).

Client Name: _____

Kleinfelder Project No: _____

Project Name: _____

Work Order Type: (Check One)

Time-and-Materials

Fixed-Price

Kleinfelder Office: _____

Subcontractor Reference No: _____

Kleinfelder Contact Name: _____

1. SCOPE OF WORK: _____

(Continue on additional page, if needed)

2. LOCATION/CLIENT FACILITY INVOLVED: _____

3. PERIOD OF PERFORMANCE: FROM: _____ TO: _____

4. AUTHORIZED FUNDING: _____

5. SPECIAL PROVISIONS: _____

NOTICE TO PROCEED IS GIVEN ON (DATE): _____

CLIENT:

KLEINFELDER:

By: _____

By: _____

Printed Name: _____

Printed Name: _____

Title: _____

Title: _____

Address: _____

Address: _____

WORK ORDER

Issued Pursuant to The Client Master Services Agreement effective as of January 21, 2025, by and between City of Keller (**Client**) and Kleinfelder, Inc. (**Kleinfelder**).

Client Name: City of Keller

Kleinfelder Project No: TBD

Project Name: **Professional Engineering and Construction Phase Services for 1.0 Million Gallon (MG) Keller Smithfield Elevated Storage Tank (EST) rehabilitation**

Work Order Type: (Check One)

Time-and-Materials

Fixed-Price

Kleinfelder Office: Dallas, Texas

Subcontractor Reference No: TBD

Kleinfelder Contact Name: Chanakya Sah, PE, CFM

1. SCOPE OF WORK: See proposal DFW24P174795R1

(Continue on additional page, if needed)

2. LOCATION/CLIENT FACILITY INVOLVED: City of Keller, Texas

3. PERIOD OF PERFORMANCE: See proposal dated DFW24P174795R1A

4. AUTHORIZED FUNDING: \$290,000

5. SPECIAL PROVISIONS: See proposal dated DFW24P174795R1

NOTICE TO PROCEED IS GIVEN ON (DATE): _____

CLIENT:

KLEINFELDER:

By: _____

By:  _____

Printed Name: Rick Hardcopf, PE

Printed Name: Rob Clark, PE

Title: Capital Projects Manager, City of Keller

Title: Director – Public Works & Water Resources

Address: 1100 Bear Creek Parkway
Keller, Texas 76248

Address: 7805 Mesquite Bend Drive, Suite 100,
Irving, Texas 75063