

DOCUMENT 005000 – AGREEMENT BETWEEN OWNER AND CONTRACTOR

Project Name: Golf Course Wells and Facilities

THIS AGREEMENT is dated as of the 6th day of October in the year 2015 by and between the City of Clinton, Oklahoma (hereinafter called Owner) and Layne Christensen (hereinafter called Contractor).

Owner and Contractor, in consideration of the mutual covenants hereinafter set forth, agree as follows:

ARTICLE 1 - WORK

- 1.01 Contractor shall complete all Work as specified or indicated in the Contract Documents. The Work under this Contract is generally described as follows: installation of two wells at the golf course and construction of the associated facilities including furnishing and installation of a prefabricated enclosure building, a valve vault, an electrical platform and well platform, two well pumps and motors, and all associated civil, electrical, and other required work to put the Golf Course Wells into operation. SCADA equipment shall be supplied by others and installed by Contractor. Programming associated with SCADA shall be provided by others.

ARTICLE 2 - ENGINEER

- 2.01 The Project has been designed by Burns & McDonnell Engineering Co. Inc., who is hereinafter called Engineer and who is to act as Owner's representative, assume all duties and responsibilities, and have the rights and authority assigned to Engineer in the Contract Documents in connection with completion of the Work in accordance with the Contract Documents.

ARTICLE 3 - CONTRACT TIME

3.01 TIME OF THE ESSENCE:

- A. All time limits for milestones, if any, Substantial Completion, and completion and readiness for final payment as stated in the Contract Documents are of the essence of the Contract.

3.02 DATES FOR SUBSTANTIAL COMPLETION AND FINAL PAYMENT:

- A. The Work will be Substantially Completed within 150 days after the date when the Contract Times commence to run as provided in the GENERAL CONDITIONS, and completed and ready for final payment in accordance with the GENERAL CONDITIONS within 240 days after the date when the Contract Times commence to run.
1. Areas to be Substantially Complete by date stated above are as follows: Installation, development and flow testing of the well to acceptable standards as detailed in these documents and installation of a well enclosure building, a valve vault, an electrical platform and well platform, pumps and motors, and all civil, electrical, and other work to develop a functional well supply system, excluding SCADA equipment. Installation of SCADA equipment and associated electrical work will be required for final completion.

3.03 LIQUIDATED DAMAGES:

- A. Owner and Contractor recognize that time is of the essence of this Agreement and that Owner will suffer financial loss if the Work is not completed within the time specified above, plus any extensions thereof allowed in accordance with the GENERAL CONDITIONS. The parties also recognize the delays, expense, and difficulties involved in proving the actual loss suffered by Owner if the Work is not Substantially Completed on time. Accordingly, instead of

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requiring any such proof, Owner and Contractor agree that as liquidated damages for delay but not as a penalty Contractor shall pay Owner Five Hundred dollars (\$500) for each day that expires after the time specified above in Paragraph 3.02 for Substantial Completion until the Work is Substantially Complete. After Substantial Completion, if Contractor shall neglect, refuse, or fail to complete the remaining Work within the time specified in Paragraph 3.02 for completion and readiness for final payment or any proper extension thereof granted by Owner, Contractor shall pay Owner Two Hundred Fifty dollars (\$250) for each day that expires after the time specified for completion and readiness for final payment.

ARTICLE 4 - CONTRACT PRICE

4.01 Owner shall pay Contractor for completion of the Work in accordance with the Contract Documents an amount in current funds equal to the sum of the amounts determined pursuant to paragraphs below:

- A. LUMP SUM CONTRACT PRICE: For all Work a Lump Sum of: Seven hundred ninety-seven thousand, six hundred twenty-nine, and no/100 dollars (\$797,629.00).
 - 1. Schedule of Adjustment Unit Prices: In the event the Work indicated or specified in the Contract Documents is increased or decreased, the price set forth above shall be increased or decreased in accordance with the following schedule of Adjustment Unit Prices.

<u>No.</u>	<u>Item</u>	<u>Unit</u>	<u>Unit Price</u>
1	Pilot hole drilling	LF	40.00
2	30-inch borehole drilling	LF	120.00
3	16-inch Certalok Casing	LF	70.00
4	16-inch SS wire wrap screen	LF	258.00
5	Gravel Pack	LF	6.00

ARTICLE 5 - PAYMENT PROCEDURES

5.01 SUBMITTAL AND PROCESSING OF PAYMENTS:

- A. Contractor shall submit Applications for Payment in accordance with the GENERAL CONDITIONS. Applications for Payment will be processed by Engineer as provided in the GENERAL CONDITIONS.

5.02 PROGRESS PAYMENTS, RETAINAGE:

- A. Owner shall make progress payments on account of the Contract Price on the basis of Contractor's Applications for Payment as recommended by Engineer, on or about the last working day of each month during construction. All such payments will be measured by the schedule of values established in the GENERAL CONDITIONS.
 - 1. Prior to Substantial Completion, progress payments will be made in an amount equal to the percentage indicated below, but, in each case, less the aggregate of payments previously made and less such amounts as Engineer shall determine, or Owner may withhold, in accordance with the GENERAL CONDITIONS.
 - a. 90% of Work completed (with the balance being retainage). If Work has been 50% completed as determined by Engineer, and if the character and progress of the Work have been satisfactory to Owner and Engineer, Owner on recommendation of Engineer, may determine that as long as the character and progress of the Work subsequently remain satisfactory to them, there will be no additional retainage on account of Work subsequently completed, in which case the remaining progress

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- payments prior to Substantial Completion will be an amount equal to 100% of the Work completed less the aggregate of payments previously made; and
- b. 90% (with the balance being retainage) of Equipment and Materials not incorporated in the Work (but delivered, suitably stored, and accompanied by documentation satisfactory to Owner as provided in the GENERAL CONDITIONS).
2. Upon Substantial Completion, Owner shall pay an amount sufficient to increase total payments to Contractor to 95% of the Contract Price (with the balance being retainage), less such amounts as Engineer shall determine, or Owner may withhold, in accordance with the GENERAL CONDITIONS.

5.03 FINAL PAYMENT:

- A. Upon final completion and acceptance of the Work in accordance with the GENERAL CONDITIONS, Owner shall pay the remainder of the Contract Price as recommended by Engineer and as provided in the GENERAL CONDITIONS.

ARTICLE 6 - CONTRACTOR'S REPRESENTATIONS

- 6.01 In order to induce Owner to enter into this Agreement, Contractor makes the following representations:
- A. Contractor has examined and carefully studied the Contract Documents including the Addenda and other related data identified in the Bid Documents.
 - B. Contractor has visited the Site and become familiar with and is satisfied as to the general, local, and Site conditions that may affect cost, progress, performance, and furnishing of the Work.
 - C. Contractor is familiar with and is satisfied as to all federal, state, and local Laws and Regulations that may affect cost, progress, performance, and furnishing of the Work.
 - D. Contractor does not consider that any additional examinations, investigations, explorations, tests, studies, or data are necessary for the performing and furnishing of the Work at the Contract Price, within the Contract Times, and in accordance with the other terms and conditions of the Contract Documents.
 - E. Contractor is aware of the general nature of work to be performed by Owner and others at the Site that relates to the Work as indicated in the Contract Documents.
 - F. Contractor has correlated the information known to Contractor, information and observations obtained from visits to the Site, reports and drawings identified in the Contract Documents, and all additional examinations, investigations, explorations, tests, studies, and data with the Contract Documents.
 - G. Contractor has given Engineer written notice of all conflicts, errors, ambiguities, or discrepancies that Contractor has discovered in the Contract Documents and the written resolution thereof by Engineer is acceptable to Contractor.
 - H. The Contract Documents are generally sufficient to indicate and convey understanding of all terms and conditions for performance and furnishing of the Work.

ARTICLE 7 - CONTRACT DOCUMENTS

7.01 CONTENTS:

- A. The Contract Documents which comprise the entire Agreement between Owner and Contractor concerning the Work consist of the following and may only be amended, modified, or supplemented as provided in the GENERAL CONDITIONS:
 1. This Agreement.

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2. Exhibits to this Agreement (enumerated as follows):
 - a. Notice to Proceed.
 - b. Contractor's Bid.
 - c. Documentation submitted by Contractor prior to Notice of Award.
3. Performance, Payment, and other Bonds.
4. General Conditions.
5. Specifications consisting of divisions and sections as listed in table of contents of Project Manual.
6. Drawings consisting of a cover sheet and sheets as listed in the table of contents thereof, with each sheet bearing the following general title: Golf Course Wells and Facilities.
7. Addenda number one (1).
8. The following which may be delivered or issued after the Effective Date of the Agreement and are not attached hereto: All Written Amendments and other documents amending, modifying, or supplementing the Contract Documents pursuant to the GENERAL CONDITIONS.

ARTICLE 8 - MISCELLANEOUS

8.01 TERMS:

- A. Terms used in this Agreement which are defined in the GENERAL CONDITIONS shall have the meanings stated in the GENERAL CONDITIONS.

8.02 ASSIGNMENT OF CONTRACT:

- A. No assignment by a party hereto of any rights under or interests in the Contract Documents will be binding on another party hereto without the written consent of the party sought to be bound; and specifically but without limitation, moneys that may become due and moneys that are due may not be assigned without such consent (except to the extent that the effect of this restriction may be limited by Law), and unless specifically stated to the contrary in any written consent to an assignment, no assignment will release or discharge the assignor from any duty or responsibility under the Contract Documents.

8.03 SUCCESSORS AND ASSIGNS:

- A. Owner and Contractor each binds himself, his partners, successors, assigns, and legal representatives to the other party hereto, its partners, successors, assigns, and legal representatives in respect to all covenants, agreements, and obligations contained in the Contract Documents.

8.04 SEVERABILITY:

- A. Any provision or part of the Contract Documents held to be void or unenforceable under any Law or Regulation shall be deemed stricken, and all remaining provisions shall continue to be valid and binding upon Owner and Contractor, who agree that the Contract Documents shall be reformed to replace such stricken provision or part thereof with a valid and enforceable provision that comes as close as possible to expressing the intention of the stricken provision.

8.05 OTHER PROVISIONS: Not Applicable.

IN WITNESS WHEREOF, Owner and Contractor have signed this Agreement in triplicate. One counterpart each has been delivered to Owner, Contractor, and Engineer. All portions of the Contract


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Documents have been signed, initialed, or identified by Owner and Contractor or identified by Engineer on their behalf.

This Agreement will be effective on October 6, 2015, which is the Effective Date of the Agreement.

CONTRACTOR: Layne Christensen

OWNER: City of Clinton, Oklahoma



By: Tim Bertucci

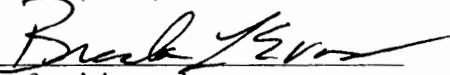
By: _____

Title: Project Manager

Title: _____

(SEAL)

(SEAL)

Attest 
Address for giving notices

Attest _____
Address for giving notices

4691 NE HWY 33

Guthrie, OK 73044

License No. DPC 0123
(if required by Law)

Approved As to Form:

Agent for Service of process

(if required by law)

By: _____
Attorney For: City of Clinton, Oklahoma

(If Contractor is a corporation,
attach evidence of authority to
sign.)

END OF DOCUMENT 005000



ADDENDUM TO DOCUMENT 005000 – AGREEMENT BETWEEN OWNER AND CONTRACTOR

Project Name: Golf Course Wells and Facilities

This Addendum to the Golf Course Well Construction Agreement previously dated October 6, 2015, by and between the **City of Clinton** (Owner) and **Layne Christensen**, (Contractor), shall be effective on October 6, 2015 and is hereby amended to state as follows:

8.05 OTHER PROVISIONS

Forum Selection. Any dispute arising out of this agreement must be treated before the District Court of Custer County, Oklahoma.

Choice of Law. This contract shall be governed and construed in accordance with the laws of the State of Oklahoma.

Conditions. As a condition precedent to initiation of construction of the second well under this agreement, the initial well must produce a volume of water which meets or exceeds the Owner's expectations. In the event that, the volume of water produced from the initial well does not meet or exceed Owner's expectations, the Owner, in its sole discretion may terminate the balance of this contract and make payment to Contractor in accordance with Article 4 of this contract.

CONTRACTOR: Layne Christensen

OWNER: City of Clinton, Oklahoma

By: _____

By: _____

Title: _____

Title: _____

(SEAL)

Attest _____