

DOCUMENT 00 50 00 – AGREEMENT BETWEEN OWNER AND CONTRACTOR

Project Name: Canute Raw Waterline

THIS AGREEMENT is dated as of the ____ day of NOVEMBER in the year 20 15 by and between City of Clinton (hereinafter called Owner) and LONEHICKORY CATTLE LLC (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 includes construction of approximately 30,000 linear feet of 12-inch PVC raw waterline, including approximately 2,600 linear feet of horizontal directionally drilled 12-inch HDPE DR-11, approximately 750 linear feet of 16-inch trenchless steel casing with HDPE carrier pipe, valves, meter vaults, PRV/PSV vaults, chemical feed vaults, appurtenances and connection. Trenchless pipe installation required under all Washita County and State roadways. The pipeline primarily lies within private property and ODOT right-of-way. This project also includes site grading, erosion control and site restoration. The project is located within unincorporated Washita County, Oklahoma.

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 shall be Substantially Completed on or before June 7, 2015⁶ and completed and ready for final payment in accordance with the GENERAL CONDITIONS on or before July 7, 2015⁶.
- 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

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by Owner if the Work is not Substantially Completed on time. Accordingly, instead of requiring any such proof, Owner and Contractor agree that as liquidated damages for delay (but not as a penalty) Contractor shall pay Owner One Thousand Dollars (\$1,000.00) 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 Five Hundred dollars (\$500.00) 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. **UNIT COST CONTRACT PRICE:** For all Work a total contract amount of:
ONE MILLION THREE HUNDRED NINETY-NINE THOUSAND FOUR HUNDRED NINETY-TWO
(\$ 1,399,492.00).
 - B. For all Work, at the prices stated in Contractor's Bid, attached hereto as an Exhibit.

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 [Day TBD] of each month during construction. All such payments will be measured by the schedule of values established in the GENERAL CONDITIONS or, in the event there is no schedule of values, as provided in the General Requirements.
 - 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).
 - 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 90% 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 - INTEREST

- 6.01 All moneys not paid when due hereunder shall bear interest at the legal rate in force at the place of the Project in accordance with the GENERAL CONDITIONS.

ARTICLE 7 - CONTRACTOR'S REPRESENTATIONS

- 7.01 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 has carefully studied all: (1) reports of explorations and tests of subsurface conditions at or contiguous to the Site and all drawings of physical conditions in or relating to existing surface or subsurface structures at or contiguous to the Site; and (2) reports and drawings of a Hazardous Environmental Condition, if any, at the Site. Contractor acknowledges that Owner and Engineer do not assume responsibility for the accuracy or completeness of information and data shown or indicated in the Contract Documents with respect to Underground Facilities at or contiguous to the Site.
 - E. Contractor has obtained and carefully studied (or assumes responsibility of having done so) all such additional supplementary examinations, investigations, explorations, tests, studies, and data concerning conditions (surface, subsurface, and Underground Facilities) at or contiguous to the Site or otherwise which may affect cost, progress, performance, and furnishing of the Work or which relate to any aspect of the means, methods, techniques, sequences, and procedures of construction to be employed by Contractor and safety precautions and programs incident thereto.
 - F. 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.
 - G. 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.
 - H. 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.
 - I. 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.
 - J. The Contract Documents are generally sufficient to indicate and convey understanding of all terms and conditions for performance and furnishing of the Work.

ARTICLE 8 - CONTRACT DOCUMENTS

8.01 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.
 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:

Canute Raw Waterline

7. Addenda numbers 1 to 2, inclusive.
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 9 - MISCELLANEOUS

9.01 TERMS:

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

9.02 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.

9.03 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.

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9.04 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.

9.05 OTHER PROVISIONS: None.

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

This Agreement will be effective on _____, 20 15, which is the Effective Date of the Agreement.

CONTRACTOR LONEHICKORY CATTLE LLC OWNER CITY OF CLINTON

By: *W. C. Celi*

By: _____

Title: owner

Title: _____

(SEAL)

(SEAL)

Attest *Kari Celi*

Attest _____

Address for giving notices

Address for giving notices

License No. _____
(if required by Law)

(If Owner is a public body, attach evidence of authority to sign and resolution or other documents authorizing execution of Agreement)

DOCUMENT 00 50 00 – AGREEMENT BETWEEN CONTRACTOR AND OWNER: continued

Agent for Service of process

(if required by law)

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

Approved As to Form:

By: _____

Attorney For: _____

END OF DOCUMENT 00 50 00