

CONTRACT

THIS CONTRACT is by and between City of Norman, Oklahoma, Norman Utilities Authority (Owner) and Layne Christensen Company (Contractor).

Owner and Contractor hereby agree as follows:

ARTICLE 1 - WORK

- 1.1 Contractor shall complete all Work as specified or indicated in the Contract Documents. The Work is generally described as follows: Groundwater Wellfield Development including Test Wells, Production Wells, and all other associated facilities and tasks in order to complete the expanded Wellfield.

ARTICLE 2 - THE PROJECT

- 2.1 The Project, of which the Work under the Contract Documents is a part, is generally described as follows: Drilling of up to ten (10) test holes, up to six (6) monitoring wells, up to six (6) permanent water wells, fully functional well houses at each permanent well site including electrical, instrumentation and controls, and all appurtenances necessary for complete and fully functioning public water supply wellfield.

ARTICLE 3 - ENGINEER

- 3.1 The Project has been designed by Carollo Engineers, Inc./ Smith Roberts Baldischwiler, LLC.
- 3.2 The Owner has retained Carollo Engineers, Inc./ Smith Roberts Baldischwiler, LLC. ("Engineer") 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 the completion of the Work in accordance with the Contract Documents.

ARTICLE 4 - CONTRACT TIMES

- 4.1 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.

4.2 Contract Times: Days:

- A. The Work will be substantially completed within 487 days after the date when the Contract Times commence to run as provided in the General Provisions, and completed and ready for final payment in accordance with the General Provisions within 547 days after the date when the Contract Times commence to run.
- B. Parts of the Work shall be substantially completed on or before the following Milestones:
 - 1. Milestone 1: Completion of Test Well Drilling and submittal of all test well data as required in Specification 01 - Water Wells, including, but not limited to, formation samples, zone specific water quality analysis, written design recommendations, Hydrogeologist analysis report, geophysical logging, and estimated yield based upon known geologic data and area wells by March 31, 2019.
 - 2. All work substantially completed by March 31, 2020
 - 3. All work finally completed by May 31, 2020

4.3 Liquidated damages:

- A. Contractor and Owner recognize that time is of the essence as stated above and that Owner will suffer financial and other losses if the Work is not completed and Milestones not achieved within the times specified above, plus any extensions thereof allowed in accordance with the Contract. The parties also recognize the delays, expense, and difficulties involved in proving in a legal or arbitration proceeding the actual loss suffered by Owner if the Work is not 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):
 - 1. Substantial Completion: Contractor shall pay Owner \$500 for each day that expires after the time (as duly adjusted pursuant to the Contract) specified in this Agreement for Substantial Completion until the Work is substantially complete.
 - 2. Completion of Remaining Work: After substantial completion, if Contractor shall neglect, refuse, or fail to complete the remaining Work within the Contract Time (as duly adjusted pursuant to the Contract) for completion and readiness for final payment, Contractor shall pay Owner \$100 for each day that expires after such time until the Work is completed and ready for final payment.
 - 3. Liquidated damages for failing to timely attain Substantial Completion and final completion are not additive and will not be imposed concurrently.
 - 4. Milestones: Contractor shall pay Owner \$250 for each day that expires after the time (as duly adjusted to the Contract) specified above for achievement of Milestones, until that Milestone is achieved.

4.4 Special Damages:

- A. In addition to the amount provided for liquidated damages, Contractor shall reimburse Owner:
 - 1. For any fines or penalties imposed on Owner as a direct result of the Contractor's failure to attain Substantial Completion according to the Contract Times; and
 - 2. For the actual costs reasonably incurred by Owner for engineering, construction observation, inspection, and administrative services needed after the time specified in this Agreement for Substantial Completion (as duly adjusted pursuant to the Contract), until the Work is substantially complete.
- B. After Contractor achieves Substantial Completion, if Contractor shall neglect, refuse, or fail to complete the remaining Work within the Contract Times, Contractor shall reimburse Owner for the actual costs reasonably incurred by Owner for engineering, construction observation, inspection, and administrative services needed after the time specified in this Agreement for Work to be completed and ready for final payment (as duly adjusted pursuant to the Contract), until the Work is completed and ready for final payment.

ARTICLE 5 - CONTRACT PRICE

- 5.1 Owner shall pay Contractor for completion of the Work in accordance with the Contract Documents the amounts that follow, subject to adjustment under the Contract:

- A. For all Base Bid Work with the following additive and deductive alternates listed below. At the prices stated by Contractor's Bid, Bid Form is attached hereto as an exhibit.

Base Bid Only: Four Million, seven hundred fourteen
thousand, four hundred, twenty-one dollars and
seventy-two cents (\$4,714,421.72)

ARTICLE 6 - PAYMENT PROCEDURES

6.1 Time of the essence: Submittal and processing of payments:

- A. Contractor shall submit Applications for Payment in accordance with the General Provisions. Applications for Payment will be processed by Engineer as provided in the General Provisions. Each monthly estimate for payment must contain or have attached an affidavit in accordance with the Constitution of the State of Oklahoma, Title 74, Section 3109-3110, and Title 62, Section 310.09. This affidavit is provided in the Claim or Invoice Affidavit.

6.2 Progress payments; retainage:

- A. Contractor shall submit Application for Payment on or about the 30th day of each month during performance of the Work as provided in paragraphs below. Owner shall make progress payments on account of the Contract Price on the basis of Contractor's Applications for Payment within 30 days provided that such Applications for Payment have been submitted in a timely manner and otherwise meet the requirements of the Contract. All such payments will be measured by the Schedule of Values established as provided in the General Provisions (and in the case of Unit Price Work based on the number of units completed) or, in the event there is no Schedule of Values, as provided elsewhere in the Contract:
 - 1. Partial payments will be made based on the Work completed and/or material stored and inspected in accordance with the Contract. Five percent (5%) of the partial payments will be held as retainage throughout the entire project/contract. Retainage may be reduced to less than five percent (5%) after submittal completion, at the option of the Owner.
 - 2. The City of Norman is exempt from the payment of any sales or use taxes. Pursuant to Title 68 O.S., Section 1356 (10) and as allowed by Oklahoma Tax Commission Rules Part 27 Trust Authority 710:65-13-140, direct vendors to the Norman Utility Authority are also exempt from those taxes. A bidder and his subcontractors may exclude from bid sales tax on appropriate equipment, materials, and supplies incorporated into the project and purchased by the NUA through the bidder. The bidder and his subcontractors will coordinate such purchases with the NUA. See Owner sales tax exemption letter (TE-1).

6.3 Final Payment:

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

ARTICLE 7 - INTEREST

- 7.1 All amounts not paid when due shall bear interest at the rate of 6 percent (6%) per annum.

ARTICLE 8 - CONTRACTOR'S REPRESENTATIONS

- 8.1 Time of the essence: 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 and any data and reference items identified in the Bidding Documents.
 - B. Contractor has visited the Site, conducted a thorough, alert visual examination of the Site and adjacent areas, and become familiar with and is satisfied as to the general, local, and Site conditions that may affect cost, progress, and performance 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, and performance of the Work.
 - D. Contractor has carefully studied all:
 - 1. Reports of explorations and tests of subsurface conditions at or adjacent to the Site and all drawings of physical conditions in or relating to existing surface or subsurface structures at the Site that have been identified in the Special Provisions, especially with respect to Technical Data in such reports and drawings; and
 - 2. Reports and drawings relating to Hazardous Environmental Condition, if any, at or adjacent to the Site which has been identified in the Special Provisions especially with respect to Technical Data in such reports and drawings.
 - E. Contractor has considered the information known to Contractor itself; information commonly known to contractors doing business in the locality of the Site; information and observations obtained from visits to the Site; the Contract Documents; and the Site-related reports and drawings identified in the Contract Documents, with respect to the effect of such information, observations, and documents on:
 - 1. The cost, progress, and performance of the Work.
 - 2. The means, methods, techniques, sequences, and procedures of construction to be employed by Contractor; and
 - 3. Contractor's safety precautions and programs.
 - F. Based on the information and observations referred to in the preceding paragraph, Contractor agrees that no further examinations, investigations,

explorations, tests, studies, or data are necessary for the performance of the Work at the Contract Price, within the Contract Times, and in accordance with the other terms and conditions of the Contract.

- 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 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.
- I. The Contract Documents are generally sufficient to indicate and convey understanding of all terms and conditions for performance and furnishing of the Work.
- J. Contractor's entry into this Contract constitutes an incontrovertible representation by Contractor that without exception, all prices in the Agreement are premised upon performing and furnishing the Work required by the Contract Documents.

ARTICLE 9 - CONTRACT DOCUMENTS

9.1 Contents:

- A. The Contract Documents consist of the following:
 - 1. Contract.
 - 2. Performance Bond.
 - 3. Maintenance Bond.
 - 4. Statutory Bond.
 - 5. General Provisions.
 - 6. Special Provisions.
 - 7. Technical Specifications.
 - 8. Drawings as listed on the sheet index.
 - 9. Addenda (numbers 1 to 2, inclusive).
 - 10. Exhibits to this Agreement (enumerated as follows):
 - a. Bid Form completed by the Contractor.
 - b. Non-Collusion Affidavit.
 - c. Business Relationship Affidavit.
 - d. Certificate of Nondiscrimination.
 - e. Certificate of Insurance.
 - f. Contractor Identification Numbers.
 - g. Claim or Invoice Affidavit.
 - h. Certificate of Contract Approval.
 - i. Notice of Award.
 - j. Proposed Subcontractor Form

11. The following which may be delivered or issued on or after the Effective Date of the Agreement and are not attached hereto:
 - a. Notice to Proceed.
 - b. Field Orders.
 - c. Work Change Directives.
 - d. Change Orders.
12. There are no Contract Documents other than those listed in this Document.
13. The Contract Documents may only be amended, modified, or supplemented as provided in the General Provisions.

ARTICLE 10 - MISCELLANEOUS

10.1 Terms:

- A. Terms used in this Agreement will have the meanings indicated in the General Provisions and the Special Provisions.

10.2 Assignment of Contract:

- A. No assignment by a party hereto of any rights under or interests in the Contract will be binding on another party hereto without the written consent of the party sought to be bound; and, specifically but without limitation, money that may become due and money that is 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.

10.3 Successors and Assigns:

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

10.4 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.

10.5 Contractor's Certifications:

- A. Contractor certifies that it has not engaged in corrupt, fraudulent, collusive, or coercive practices in competing for or in executing the Contract.
 - 1. "Corrupt practice" means the offering, giving, receiving, or soliciting of anything of value likely to influence the action of a public official in the bidding process or in the Contract execution;
 - 2. "Fraudulent practice" means an intentional misrepresentation of facts made:
 - a. To influence the bidding process or the execution of the Contract to the detriment of Owner.
 - b. To establish Bid or Contract prices at artificial non-competitive levels.
 - c. To deprive Owner of the benefits of free and open competition.
 - 3. "Collusive practice" means a scheme or arrangement between 2 or more Bidders, with or without the knowledge of Owner, a purpose of which is to establish Bid prices at artificial, non-competitive levels.
 - 4. "Coercive practice" means harming or threatening to harm, directly or indirectly, persons or their property to influence their participation in the bidding process or affect the execution of the Contract.

Norman Utilities Authority
2018 Groundwater Wellfield Development

Contract K-1819-44/ Bid No. 1819-11
Carollo Project No. 10328A.10

IN WITNESS WHEREOF, Owner and Contractor have signed this Agreement. Counterparts have been delivered to Owner and Contractor. All portions of the Contract Documents have been signed or have been identified by Owner and Contractor or on their behalf.

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

Owner: Norman Utilities Authority

Contractor:



Layne Christensen Company

By: _____

By: _____

Title: Chairperson

Title: Jigisha Desai, Vice President

(If Contractor is a corporation, a partnership, or a joint venture, attach evidence of authority to sign.)

Attest: _____

Attest: _____

Title: Secretary

Title: Kenneth B. Olson, Assistant Secretary

Address for giving notices:

Address for giving notices:

4691 NE Hwy 33

Guthrie, OK 73044

License No. N/A

(Where applicable)

APPROVED BY CITY OF NORMAN LEGAL DEPARTMENT
BY _____ DATE 11/20/18

Norman Utilities Authority
2018 Groundwater Wellfield Development

Bid No. 1819-11
Carollo Project No. 10328A.10

ACCEPTANCE OF NOTICE

Receipt of the above NOTICE OF AWARD is hereby acknowledged by _____
Layne Christensen Company this 2nd day of November,
2018, and hereby certify that this firm does not appear on the List of Parties Excluded from
Federal Procurement Programs, i.e., list of Debarred Contractors.

BY 

Jigisha Desai, Vice President

TITLE

