

**SETTLEMENT AGREEMENT BETWEEN THE CITY OF RAPID CITY AND
LAYNE CHRISTENSEN COMPANY REGARDING REPAIRS FOR WELL NO. 8**

This Settlement Agreement (the “Agreement”) is made and entered into by and between the CITY OF RAPID CITY, a municipal corporation of 300 Sixth Street, Rapid City, SD 57701 (herein after referred to as the “City”) and LAYNE CHRISTENSEN COMPANY, of P.O. Box 189, Kearney, NE 68848-0189 (herein after referred to as the “Contractor”).

WHEREAS, the City and Contractor have entered into a contract whereby Contractor agreed to perform certain repairs on City’s Well No. 8 in exchange for compensation as outlined in that agreement, which was dated March 21, 2011 (hereinafter the “Contract”); and

WHEREAS, Contractor performed work pursuant to the Contract to install a new pump and motor, which work involved disassembling, removing, inspecting and reinstalling well pipe; and

WHEREAS, following the work performed, the well pipe failed and the new pump and motor were destroyed; and

WHEREAS, the parties acknowledge that finding an exact determination of what caused the damage to the equipment would be difficult and require extensive investigation, expense, and possibly litigation; and

WHEREAS, the parties deem it in their best interest to come to a mutual settlement rather than engaging in litigation or other costly dispute resolution; and

WHEREAS, the parties desire to enter into this Agreement to reduce their mutual agreements to writing.

NOW THEREFORE, in consideration of the mutual promises and agreements contained herein, the parties agree as follows:

1. Recitals. The recitals set forth above constitute an integral part of this Agreement and are incorporated herein by this reference as if fully set forth herein as agreements of the parties.
2. Agreed upon Resolution. City and Contractor agree to the following work to repairs:
 - a. All material and labor for removal of the pump and motor from Well 8 will be provided by Contractor at no cost to the City.
 - b. Contractor shall provide and install a new pump and motor for Well 8 according to the bid specifications in the Contract at no cost to the City.

- c. Contractor shall provide and install two new check valves and nipples for Well 8 at no cost to the City. Additional check valves and nipples will be the responsibility of the City.
- d. Contractor shall provide and install new 8 round thread well column pipe and couplings at a cost of \$29.35 per foot. The old column pipe will remain the property of the City. City agrees to entertain a quote from Contractor to purchase the old pipe and couplings. If Contractor purchases the pipe, it agrees to remove the pipe from the Well 8 site promptly at its own sole expense.
- e. Contractor and City agree to split the cost of materials of new 350 MCM cable. Contractor has provided a price of \$44.45 per foot, of which the City shall pay one-half, or \$22.23 per foot, for Contractor to supply and install the cable. The old cable shall remain the property of the City.
- f. The above costs include all incidental items such as clamps and tubing necessary for proper installation of the pump and motor per the Contract specifications.
- g. All work conducted and materials provided for reinstallation of the Well 8 pump and motor would be covered by a two year warranty per the original Contract specifications.

3. City Acceptance of Work. Once construction is completed, the City shall inspect the work to ensure compliance with City's ordinances and other requirements for construction of public improvements. Any deficiencies shall be corrected prior to City's acceptance of the improvements. Acceptance of improvements shall comply with the City's Standard Specifications for Public Works Construction.

4. Payments. Upon City's acceptance of the work, Contractor shall invoice City for its share of the costs of the work. City shall pay Contractor within 45 days of receiving the invoice.

5. Timetable. The work described above shall be completed on or before the 1st day of June, 2012.

6. Relationship between the Parties. This Agreement does not create an employment or agency relationship between the City and Contractor or Contractor's officers, directors, agents or employees. Nothing contained in this Agreement is intended to create a partnership or joint venture between Contractor and the City. No agent of Contractor shall be the agent of the City, and Contractor covenants that it will not take any action in the name of, or by holding itself out as the agent of, the City.

7. Original Contract. This Agreement shall not supersede or replace the Contract, but shall be deemed to amend the Contract, and such amendment shall control to the extent it is

inconsistent with the Contract. The balance of the Contract shall remain in full force and effect.

8. Contractor Authority. Contractor warrants that is a corporation duly organized, validly existing and authorized to do business the State of South Dakota, and it has the right, power and authority to enter into this Agreement.

9. Remedies. The parties may undertake any legal or equitable action available to enforce the provisions of this Agreement in addition to any other remedies provided herein.

10. Integration. This Agreement is the entire agreement of the parties and supersedes all prior negotiations, agreements and understandings, whether oral or written.

11. Amendments. This Agreement may only be modified by mutual agreement of both parties. Any modifications or addendums to this Agreement must be in writing signed by both parties.

12. Severability. If any section, or provision of this Agreement is declared invalid for any reason whatsoever by any competent court, such invalidity shall not affect any other section or provision of this application if they can be given effect without the invalid section or provisions.

13. Governing Law and Venue. This Agreement shall be construed according to the laws of the State of South Dakota without regard for any choice of law provisions. Any action concerning this agreement shall be venued in the Pennington County Circuit Court.

Dated this ____ day of _____, 2012.

CITY OF RAPID CITY

Mayor

ATTEST:

Finance Officer

LAYNE CHRISTENSEN COMPANY

By: _____

Its: _____