

**AN ORDINANCE AUTHORIZING THE MAYOR AND/OR CITY ADMINISTRATOR OF THE CITY OF WAYNESVILLE TO EXECUTE A CONTRACT BETWEEN THE CITY AND SCOBEE POWERLINE CONSTRUCTION CONCERNING THE CITY'S ELECTRIC INFRASTRUCTURE; FIXING AN EFFECTIVE DATE**

**WHEREAS**, the City Council of the City of Waynesville requested quotes from area electric contractors for the replacement and installation of conductors and certain power poles within the City's electric infrastructure; and

**WHEREAS**, after careful review of the quotes received, the City Council wishes to enter into an Agreement with Scobee Powerline Construction to complete the work described in the Request for quotes dated July 2024.

**NOW THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF WAYNESVILLE, MISSOURI AS FOLLOWS:**

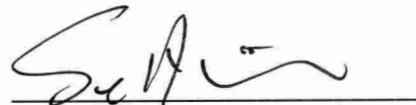
**Section 1.** The Mayor and/or City Administrator is hereby authorized to execute, on behalf of the City of Waynesville, Missouri, Exhibit "A", an agreement with Scobee Powerline Construction, LLC, incorporated herein, and attached hereto, by specific reference.

**Section 2.** The City Administrator is also authorized to execute this Agreement and other documents necessary to facilitate the agreement in the absence or unavailability of the Mayor.

**Section 3.** That all ordinances or parts of ordinances therefore enacted which are in conflict are hereby repealed.

**Section 4.** This ordinance shall be in full force and effect from and after its passage and approval.

**PASSED AND APPROVED BY THE MAYOR AND THE CITY COUNCIL OF THE CITY OF WAYNESVILLE, MISSOURI ON THIS 15<sup>th</sup> DAY OF AUGUST, 2024.**



Sean A. Wilson, Mayor

ATTEST:



Michele Brown, City Clerk

# POWERLINE CONSTRUCTION AGREEMENT

This contract is made and entered into on this 12th day of August 2024, by and between the City of Waynesville and Scobee Powerline Construction, LLC, hereinafter referred to as Contractor.

WHEREAS the City of Waynesville advertised for qualified contractors to replace poles and conductor at existing locations in accordance with plans and specifications contained in the Contract Documents; and

WHEREAS Contractor responded to said advertisement to perform said services; and

WHEREAS the City of Waynesville has selected the Contractor to perform said services; and

NOW THEREFORE: in consideration of the foregoing and the mutual terms and conditions contained herein, the parties agree:

## **1. General Requirements**

1.1 DESCRIPTION OF WORK: Contractor agrees to perform all work the shown on the specifications and described in the Bid and Contract Documents related to the powerline construction of the poles and wire at existing locations (the "Work")

1.2 The Contractor shall provide all deliverables/services to the sole satisfaction of the City of Waynesville.

1.3 Unless otherwise specified herein, the City of Waynesville shall furnish all material. Contractor will furnish labor, equipment and supplies necessary to provide the deliverables/services required herein.

## **2. Specific Requirements**

- 2.1 All work shall be accomplished in a safe manner in accordance with the 2020 Edition of the National Electric Code and OSHA standards.
- 2.2 The Contractor shall repair any damages to City of Waynesville's property caused by the Contractor's equipment and/or employees/subcontractors in a timely manner at no expense to the City of Waynesville.
- 2.3 The Contractor shall conduct the work so as not to interfere with the daily activities of the City of Waynesville and any or all employees and personnel located in the Work site.
- 2.4 The City of Waynesville reserves the right to inspect the work site covered by this agreement, verify quantities and review operations at any time without advance notifications to the Contractor.
- 2.5 City of Waynesville is responsible for the purchase of all material relating to the construction as described in the Bid and Contract Documents.

## **3. Performance Schedule**

- 3.1 The City of Waynesville and Contractor shall determine when contract performance is to begin once Notice to Proceed is issued. The Work under this contract shall be completed by no later than October 31, 2024.
- 3.2 Liquidated damages. Time of completion of work by the Contractor is of the essence, Should Contractor, or in the case of default, the surety, fail to complete the Work within the time specified in the contract, or within such extra time as may be allowed by the City of Waynesville, Contractor (or surety) shall be liable to the City of Waynesville in the amount of \$500.00 per day for each and every

calendar day that the contract remains uncompleted after the time allowed for completion, as liquidated damages, and not as a penalty, it being stipulated that actual damages to the City of Waynesville and the public arising from Contractor's failure to timely complete the work would be difficult, if not impossible, to ascertain. The amount assessed as liquidated damages may be withheld from any money otherwise due to Contractor from the City of Waynesville.

3.3 The Contractor may work six days per week, excluding holidays, if approved by the City of Waynesville.

#### **4. Termination**

4.1 The City of Waynesville reserves the right to terminate this contract by giving at least five (5) days prior written notice to the Contractor, without prejudice to any other rights or remedies of the City of Waynesville should the Contractor be adjudged a bankrupt, or if Contractor should make a general assignment for the benefit of its creditors, or if a receiver should be appointed for Contractor or for any of its property, or if Contractor should persistently or repeatedly refuse or fail to supply enough properly skilled workmen or proper material, or if Contractor should refuse or fail to make prompt payment to any person supplying labor or materials for the work under the contract, or persistently disregard instructions of the City of Waynesville, or fail to observe or perform any provisions of the contract.

## **5. Equipment**

5.1 All trucks and other equipment must follow all applicable federal, state, and local rules and regulations. All trucks and other equipment shall be equipped with back-up alarms.

## **6. Insurance**

6.1 The Contractor shall keep and maintain the following insurance coverage and provide City of Waynesville with a Certificate of Insurance in a form acceptable to the City of Waynesville evidencing that said insurance is in place:

Contractor's Commercial General Liability and Property Damage Insurance including vehicle coverage issued to the Contractor and protecting the Contractor from all claims for personal injury, including death, and all claims for destruction of or damage to property, arising out of or in connection with any operations under the contract documents, whether such operations be by the Contractor or anyone directly or indirectly employed by the Contractor or by a Subcontractor employed by the Contractor.

Where the work to be performed under the contract documents involves excavation or other underground work or construction, the Property Damage Insurance provided shall cover all injury to or destruction of property below the surface of the ground, such as wires, conduits, pipes, mains, sewers, etc., caused by the Contractor's operations.

The Contractor shall maintain Automobile Public Liability and Property Damage Insurance to protect the Contractor from all claims arising from the use of the following in the execution of the work: a) Contractor's own automobiles and trucks.

b) Hired automobiles and trucks. c) Automobiles and trucks not owned by the Contractor. The insurance shall cover the use of the automobiles and trucks both on and off the site of the project. The minimum amounts of such insurance shall be the same as required for Public Liability and Property Damage Insurance.

The Contractor shall procure and maintain, at the Contractor's own expense, during the contract time, in accordance with the provisions of the laws of the state in which the work is performed, Workman's Compensation Insurance, including occupational disease provisions, for all of the Contractor's employees at the site of the project and in case any work is sublet, the Contractor shall require such Subcontractor similarly to provide Workmen's Compensation Insurance, including occupational disease provisions for all of the latter's employees unless such employees engaged in hazardous work under this contract at the site of the project is not protected under Workmen's Compensation statute, the Contractor shall provide, and shall cause each Subcontractor to provide, adequate and suitable insurance for the protection of its employees not otherwise protected. Employer's liability coverage in the amount of \$1,000,000 will be provided.

The liability insurance policies will name Contractor as an insured and City of Waynesville as an additional insured and will contain a clause requiring the insurer to give City of Waynesville at least 30 days prior written notice of any alteration in the terms of such policy or the cancellation thereof. Any coverage of the City of Waynesville as an additional insured will be primary to any other coverage of the City of Waynesville. Each liability policy shall contain an endorsement that nothing contained in a policy shall be construed to broaden the liability of the City of

Waynesville beyond any applicable Missouri statutes, nor to abolish or waive any defense at law which might otherwise be available to the City of Waynesville or its officers and employees.

Prior to commencing work, Contractor shall provide City of Waynesville certificates of insurance evidencing the required coverages.

If the Contractor maintains higher limits than the minimums required, the member requires and shall be entitled to coverage for the higher limits maintained by the Contractor. City of Waynesville's receipt or review of any certificate of insurance reflecting that Contractor or one of its subcontractors or suppliers has failed or may have failed to comply with any insurance requirement of the contract documents shall not constitute a waiver of any of City of Waynesville's insurance rights under the contract documents, with all such rights being fully and completely reserved by the City of Waynesville. City of Waynesville's receipt or review of any certificate of insurance reflecting that Contractor or one of its subcontractors or suppliers has failed or may have failed to comply with any insurance requirement of the contract documents shall not constitute a waiver of any of City of Waynesville's insurance rights under the contract documents, with all such rights being fully and completely reserved by the City of Waynesville.

**7. Performance Payment Bond\***

~~7.1 Contractor shall provide to City of Waynesville a performance and payment bond in the amount of \$225,000 in a form and with a surety acceptable to City of Waynesville to insure the faithful performance by Contractor of all obligations contained in this contract and the prompt and proper payment by Contractor to all laborers, suppliers, and subcontractors supplying materials or labor related to this contract.~~

**\*NOT APPLICABLE**

**8. Prevailing Wage**

8.1 Contractor and any subcontractors shall be required to pay the prevailing hourly rate of wage for each craft or type of workman required to execute the Work as determined by the Department of Labor and Industrial Relations of Missouri. See Schedule of Prevailing Hourly Wage Order No. 27 attached. At any time the Contractor is found to not have paid prevailing wages, the Contractor shall forfeit as a penalty to the City of Waynesville one hundred dollars for each underpaid worker employed, for each calendar day, or portion thereof such worker is paid less than the said stipulated rates for any work done under this contract.

8.2 Contractor and any subcontractors are required to comply with all state and federal labor laws and reporting standards.

**9. Payment**

9.1 Payment for work may be invoiced when the project and verification of all installed units is completed.



## **10. Changes, Addition, Deductions and Extra Work**

10.1 Upon proper action the City of Waynesville may authorize changes, additions, or deductions from work to be performed by written notice to the Contractor.

10.2 No extra work shall be done or any obligation incurred except upon written order by the City of Waynesville. If any change causes an increase or decrease in the Contractor's cost of, or the time required for, the performance of any part of the work under this contract, the City of Waynesville shall make an equitable adjustment and modify the contract in writing through the use of a supplemental to the contract.

## **11. Construction of Safety and Health**

11.1 In accordance with the provisions of 292.675, RSMo., Contractor, by execution of this contract affirms that it has provided a ten-hour Occupational Safety and Health Administration (OSHA) construction safety program for all of their on-site employees which included a course in construction safety and health approved by OSHA or a similar program approved by the department which is at least as stringent as an approved OSHA program or that any employees who have not previously completed the program will complete such the program within sixty days of beginning work on this project. Contractor shall produce certificates evidencing the completion of said course upon request of City of Waynesville.

**12. Employment of Illegal Aliens Prohibited.**

12.1 By Execution of this contract, Contractor affirms that Contractor does not currently and will not, during the term of this contract employ any illegal aliens. Contractor shall take the steps necessary to comply with the requirements of 8 U.S.C. 1324a with respect to the examination of an appropriate document or documents to verify whether the individual is an unauthorized alien and specifically to enroll and participate in the federal work authorization program (sometimes known as the E-Verify program).

**13. Project Pricing**

13.1 BIDDER agrees to perform all work shown on the SPECIFICATIONS and described in the CONTRACT DOCUMENTS for the following cost:

**Total Project Cost: \$220,408.00 DO NOT EXCEED**

NOTE: Above amounts shall include all applicable taxes and fees. The sales tax exemption number will be given to the contractor.

**14.** By execution of this contract the parties signify that this contract constitutes the entire agreement between them and that there are no other oral or written terms, conditions or representations not expressly included herein.

**15.** This contract is made under and is in all respects to be governed by the laws of the State of Missouri.

**16.** The Contractor will sign and submit to the City of Waynesville prior to commencement of work the attached affidavits.

## **17. General Independent Contractor Clause**

17.1 This Contract does not create an employee/employer relationship between the parties. It is the parties' intention that the Contractor will be an independent contractor and not the City of Waynesville's employee for all purposes, including, but not limited to, the application of the Fair Labor Standards Act minimum wage and overtime payments, Federal Insurance Contribution Act, the Social Security Act, the Federal Unemployment Tax Act, the provisions of the Internal Revenue Code, Missouri Revenue and Taxation laws, Missouri Workers' Compensation and Unemployment Insurance laws. The Contractor will retain sole and absolute discretion in the judgment of the manner and means of carrying out the Contractor's activities and responsibilities hereunder. The Contractor agrees that it is a separate and independent enterprise from the City of Waynesville, that it has a full opportunity to find other business, that it has made its own investment in its business, and that it will utilize a high level of skill necessary to perform the work. This contract shall not be construed as creating any joint employment relationship between the Contractor and the City of Waynesville, and the City of Waynesville will not be liable for any obligation incurred by the Contractor, including but not limited to unpaid minimum wages and/or overtime premiums.

**18.** In no event shall the City of Waynesville be liable to the Contractor for special, indirect, or consequential damages, except those caused by the City of Waynesville's gross negligence or willful or wanton misconduct arising out of or in any way connected with a

breach of this contract. The maximum liability of the City of Waynesville shall be limited to the amount of money to be paid by the City of Waynesville under this contract.

**19. Conflict of Interest**

19.1 In accepting this contract, Contractor certifies that no member or officer of its firm or corporation is an officer or employee of the City of Waynesville, or any of its boards or agencies, and further that no officer or employee of the City of Waynesville has any financial interest, direct or indirect, in this contract. All applicable federal regulations and provisions of RSMo. Section 105.450 et seq. shall not be violated,

**20. Assignment**

20.1 The Contractor shall not assign any interest in this contract, and shall not transfer any interest in the same (whether by assignment or novation), without prior written consent of the City of Waynesville thereto, provided, however, that claims for money due or to become due to the Contractor from the City of Waynesville under this Contract may be assigned to a bank, trust company, or other financial institution without such approval. Notice of such assignment or transfer shall be furnished in writing promptly to the City of Waynesville and the bond surety. Any such assignment is expressly subject to all rights and remedies of the City of Waynesville under this contract, including the right to change or delete activities from the Contract or to terminate the same as provided herein, and no such assignment shall require the City of Waynesville to give any notice to any such assignee of any actions which the City of Waynesville may take under this contract.

## **21. Nondiscrimination**

21.1 The Contractor agrees in the performance of this contract not to discriminate on the grounds or because of race, creed, color, national origin or ancestry, sex, religion, handicap, age, or political opinion or affiliation, against any employee of Contractor or applicant for employment and shall include a similar provision in all subcontracts let or awarded hereunder.

## **22. Occupational License**

22.1 The Contractor shall obtain and maintain an occupational license with the City, if required by city code and any required state or federal license. The cost for this occupational license shall be borne by the Contractor. No contract will be executed by the City of Waynesville until this occupational license has been obtained and that the Contractor is current on any City taxes is verified.

## **23. Warranty**

23.1 Contractor warrants and guarantees to Owner that all Work will be in accordance with the Contract Documents and will not be defective. Contractor's warranty and guarantee hereunder excludes defects or damage caused by: abuse, modification, or improper maintenance or operation by persons other than Contractor, Subcontractors, Suppliers, or any other individual or entity for whom Contractor is responsible; or normal wear and tear under normal usage. Contractor's obligation to perform and complete the Work in accordance with the Contract Documents shall be absolute.

## **24. Correction Period**

24.1 If within one year after the date of Substantial Completion (or such longer period of time as may be prescribed by the terms of any applicable special guarantee required by the Contract Documents) or by any specific provision of the Contract Documents, any Work is found to be defective, or if the repair of any damages to the land or areas made available for Contractor's use by Owner or permitted by Laws and Regulations is found to be defective, Contractor shall promptly, without cost to Owner and in accordance with Owner's written instructions: repair such defective Work; or correct such defective Work; or if the defective Work has been rejected by Owner, remove it from the Project and replace it with Work that is not defective, and satisfactorily correct or repair or remove and replace any damage to other Work, to the work of others or other land or areas resulting therefrom.

If Contractor does not promptly comply with the terms of Owner's written instructions, or in an emergency where delay would cause serious risk of loss or damage, Owner may have the defective Work corrected or repaired or may have the rejected Work removed and replaced. All claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to such correction or repair or such removal and replacement (including but not limited to all costs of repair or replacement of work of others) will be paid by Contractor.

Where defective Work (and damage to other Work resulting therefrom) has been corrected or removed and replaced under this Paragraph, the correction period hereunder with respect to such Work will be extended for an additional period of one year after such correction or removal and replacement has been satisfactorily completed.

Contractor's obligations under this Paragraph are in addition to any other obligation or warranty. The provisions of this Paragraph shall not be construed as a substitute for, or a waiver of, the provisions of any applicable statute of limitation or repose.

Nothing in this Article concerning the correction period shall establish a period of limitation with respect to any other obligation which Contractor has under the Contract Documents. The establishment of time periods relates only to the specific obligations of Contractor to correct the Work and has no relationship to the time within which Contractor's obligations under the Contract Documents may be sought to be enforced, nor to the time within which proceedings may be commenced to establish Contractor's liability with respect to Contractor's obligations other than to specifically correct the Work

## **25. Jurisdiction**

25.1 This contract and every question arising hereunder shall be construed or determined according to the laws of the State of Missouri. All suits or actions

related to this contract be adjudicated and venue shall be proper only in the Circuit Court of Clinton County, Missouri.

**26. Contract Documents** The contract documents shall consist of the following:

26.1 This Contract

26.2 Contractor's Bid Proposal

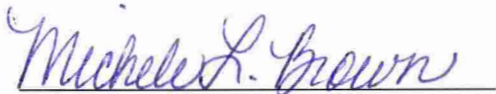
**27. Compliance Laws**

27.1 Contractor agrees to comply with all applicable federal, state and local laws or rules and regulations applicable to the provision of services and products hereunder.

IN WITNESS WHEREOF, the parties hereto have set their hands and seals on the day first written.



\_\_\_\_\_  
City of Waynesville



Attest, City Clerk



\_\_\_\_\_  
Scobee Powerline Construction