

Agreement Between Owner and Contractor

This agreement is dated as the 14th day of February in the year 2023 by and between Waverly Communications Utility (herein after called the OWNER) and _____ (herein after called the Contractor)

Owner and Contractor hereby agree as follows:

Article I – Work

Contractor shall complete all Work as specified or indicated in the Contract Documents. The Work is generally described as follows:

Labor to install Fiber to the Premise Feeder/Distribution/Drop Network Construction in Bremer County, IA.

Article 2 – The Project

The Project for which the work under the Contract Documents may be the whole or only a part is described as follows:

Labor for Fiber to the Premise Feeder/Distribution/Drop Network Construction in Bremer County, IA.

Article 3 – Engineer

The Project has been designed by Brian K. Nordtvedt P.E..

The Owner has retained Farr Technology, 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

- A. All time limits for Milestones, if any, Substantial Completion, and Final Completion and readiness for final payment as stated in the Contract Documents are of the essence of the Contract.
- B. The work will be fully completed and ready for final payment on or before December 31, 2024.
- C. Contractor and Owner 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 times specified in Article 3(B). Owner and Contractor agree that as liquidated damages for delay (but not as a penalty),

Contractor shall pay owner \$500.00 for each day that expires after the time specified in Article 3(B) above for completion and readiness for final payment until the work is completed and ready for final payment.

Article 5 - Contract Price

Owner shall pay Contractor for the 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 Article 4 below:

- A. For all Work, at the prices stated in Contractors Bid, attached here to as an exhibit.
- B. For all Unit Price Work, an amount equal to the sum of the established unit price for each separately identified item of Unit Price Work times the estimated quantity of that item as indicated in the Contractor’s Bid.
- C. Contract price shall include all applicable sales, use and other taxes as may apply. Owner is a taxable entity.
- D. Unless otherwise specified in the Agreement, Contractor shall obtain and pay for all construction permits and licenses. Contractor shall pay all governmental charges and inspection fees necessary for the performance of the Work.
- E. Provide for one (1) year warranty on all workmanship. Maintenance Bonds shall remain in place for 1 year from Final Completion Date.

Article 6 – Payment Procedures

- A. Contractor shall submit applications for payment to the Engineer for review according to Article 14 of the general conditions.
- B. Owner shall make progress payments on account of the Contract Price on the basis of Contractor’s application for payment during performance of the Work.
 - 1. 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 Owner will determine may be withheld:
 - A. 95 percent of Work completed (with the balance being retainage); and
 - B. 0 percent (with the balance being retainage) of cost of materials and equipment not incorporated into the work.
- C. Final Payment will be made in accordance with Article 15 of the general conditions.

Article 7 – Contractors Representation

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 the other related data identified in the Bidding 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, 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 work.
- D. Contractor has considered the information known to Contractor; 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 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, including any specific means, methods, techniques, sequences, and procedures of construction expressly required by the Contract Documents; and (3) Contractors safety precautions and programs.
- E. Based on the information and observations referred to in Paragraphs above, Contractor does not consider that any further examinations, investigations, explorations, tests, studies or data are necessary for the performance of the Work at the Contract Price, with the Contract Times, and in accordance with the other terms and conditions of the Contract Documents.
- F. Contractor is aware of the general nature of the work to be performed by Owner and others at the Site that relates to the Work as indicated in the Contract Documents.
- G. Contractor has given Owner written notice of all conflicts, errors, ambiguities, or discrepancies that Contractor has discovered in the Contract Documents, and is acceptable to the 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 8 – Contract Documents

Contents

- A. The Contract Documents consist of the following:
 - 1. This Agreement
 - 2. Technical Specifications
 - 3. Exhibits to this Agreement
 - a. Contractors Bid
 - b. Documentation submitted by Contractor prior to Notice of Award
 - 4. Performance, Payment and Maintenance Bond
 - 5. General Conditions
 - 6. Supplementary Conditions
 - 7. All documents within the RFP
 - 8. Drawings
 - 9. Addenda
- B. The documents listed in Article 8.A are attached to this Agreement (except as expressly noted otherwise above)
- C. There are no Contract Documents other than those listed above in this Article 7.

- D. The Contract Documents may only be amended, modified, or supplemented by written authorization from both the Owner and Contractor.

Article 9 – Miscellaneous

- A. Terms used in this Agreement will have the meanings stated in the General Conditions and the Supplementary Conditions.
- B. Assignment of Contract - 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, 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.
- C. Successors and Assigns – Owner and Contractor each binds itself, its partner, 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.
- D. Severability – Any provision of 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.
- E. In the event the Owner should prevail in any legal action arising out of the performance or non-performance of this Agreement, the Contractor shall pay, in addition to any damages, all expenses of such action including reasonable attorney's fees, all expert witness fees, costs, and litigation expenses incurred by the Owner, including those incurred on appeal. The term “legal action” shall be deemed to include any arbitration, administrative proceedings, and all actions at law or in equity, including appeals.
- F. Contractor’s Certificates
 - 1. Contractor certifies that it has not engaged in corrupt, fraudulent, collusive, or coercive practices in competing for or in executing the Contract. For the purposes of the Paragraph:
 - a. “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;
 - b. “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, or (c) to deprive Owner of the benefits of free and open competition;

- c. "collusive practice" means a scheme or arrangement between two or more bidders, with or without the knowledge of Owner, a purpose of which is to establish Bid prices at artificial, non-competitive levels; and
- d. "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.

Article 10 – Governing Law and Jurisdiction

- A. This agreement is governed by the laws of the State of Iowa, Bremer County.

IN WITNESS THEREOF, Owner and Contractor have signed this Agreement in duplicate. Counter parts have been delivered to Owner and Contractor. All portions of the Contract Documents have been signed or identified by Owner and Contractor or on their behalf.

This Agreement will be effective on _____ (which is the effective date of the Agreement).

OWNER:

Waverly Communications Utility

By: _____

Title: _____

Address: 1002 Adams Parkway
Waverly, IA 50677

CONTRACTOR:

By: _____

Title: _____

Address: