

RESOLUTION

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF FLORENCE, ALABAMA, as follows:

SECTION 1. That the contract with Osmose Utilities Service, Inc., a copy of which is attached hereto, to provide a pole attachment inventory audit for the Florence Utilities Electricity Department, Florence, Alabama, in the unit price agreement of \$6.75 per pole for Joint Use Pole Inventory, a Standby Hourly Rate of \$130.00, and \$.75 per pole for Optional Photo, and the same is hereby approved, ratified and confirmed.

SECTION 2. That the Council has investigated and ascertained and hereby finds Osmose Utilities Service, Inc., to be qualified, responsible, and competent to perform said services.

SECTION 3. That the contract for such services be awarded to Osmose Utilities Service, Inc., and that the proper officials of the City execute the contract in the name of and on behalf of said City.

ADOPTED this the _____ day of _____, 2025.

CITY COUNCIL

APPROVED this the _____ day of _____, 2025.

MAYOR

ADOPTED & APPROVED this the _____ day of _____, 2025.

CITY CLERK-TREASURER

Osmose Utilities Services, Inc.
PROFESSIONAL SERVICES AGREEMENT

This PROFESSIONAL SERVICES AGREEMENT (the "Agreement") is made and entered into as of the last date set forth below, by and between OSMOSE UTILITIES SERVICES, INC., a Delaware corporation with a place of business at 191 Peachtree Towers, 5th Floor, 191 Peachtree Street NE, Atlanta, Georgia 30303 ("Contractor"), and the CITY OF FLORENCE, ALABAMA, with a place of business at 110 W. College Street, Florence, Alabama 35630 ("Owner"), jointly referred to as the "Parties", and individually a "Party".

In consideration of the mutual promises and conditions contained in this Agreement, the Parties mutually agree as follows:

- 1.0 **Contract Documents**: The term "Contract Documents" shall mean this Agreement, Contractor's proposal, any associated amendments, any Statement of Work defined in writing by the Parties, and any other separate document mutually agreed to and executed by the Parties that are now or hereafter agreed to and signed by the Parties and that may contain, without limitation, a specific description of the scope of the project, pricing assumptions, Source Materials (as defined below), and/or the Data Deliverables (as defined below). The Parties agree that the Contract Documents shall be incorporated as part of this Agreement. Furthermore, in the event that a Statement of Work is developed and executed between the Parties, the Statement of Work shall supersede and replace all *prior* correspondence including, but not limited to, Contractor's proposal and any associated amendments. In the event of inconsistent or contradictory provisions among any of the Contract Documents, inclusive of Owner's purchase order, the provisions of this Agreement shall take precedence.
- 2.0 **Supplemental Terms and Conditions**: In the event that Owner desires services from Contractor that fall outside the scope of this Agreement, Contractor will submit supplemental terms and conditions for such services. The terms and conditions of this Agreement shall be overridden by any supplemental terms and conditions that are submitted by Contractor and approved in writing by both Parties.
- 3.0 **Work**: Contractor shall furnish all supervision, labor, tools, equipment, and materials necessary or required to perform the work on Owner's infrastructure including, but not limited to, wood poles, steel or metal poles, steel towers, and/or underground/surface mounted electrical equipment (collectively the "Structures" and/or individually referenced by specific structure type as applicable) as described in Contractor's price schedule and in accordance with the specifications set forth in the Contract Documents (collectively the "Work").
- 4.0 **Source Materials**: For the purposes of this Agreement, "Source Materials" shall mean the data which Owner may have available including locations of the Work sites and other data pertinent to the Work. Whenever applicable and requested, Owner, without charge, shall furnish or make available for examination or use by Contractor any Source Materials which Contractor may need during its performance of the Work. Specific Source Materials needed by Contractor will be further defined in the Contract Documents.

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- 5.0 Contractor Fees: Owner agrees to pay Contractor, and Contractor agrees to accept as full compensation for the Work performed and materials used, the fees set forth in or otherwise calculated in accordance with the rates set forth in Contractor's price schedule which are incorporated into the Contract Documents. Pricing as submitted is fixed for the first year of the Agreement. For subsequent contract years, Contractor may increase its rates no more frequently than semi-annually based on the most current "Consumer Price Index for All Urban Consumers (CPI-U): U.S. city average, special aggregate indexes (Services)". If during the term of this Agreement, unforeseen economic conditions (including but not limited to, fuel and raw material price increases, energy, government or regulatory charges, pandemic, etc.) change Contractor's cost of providing products and/or services to Owner, Contractor may increase its rates and charges or impose applicable surcharges to cover such increased costs, provided Contractor presents satisfactory documentation of such increases. Contractor will provide Owner with thirty (30) days' written notice prior to any price increase. Furthermore, Owner shall be responsible for all applicable sales taxes, unless it provides to Contractor a valid exemption certificate or other documentation satisfactory to Contractor reflecting a sales tax exemption. If the Work is subject to a gross receipts or other similar tax, said amount shall be added to the invoice and is not included in the rates set forth in Contractor's price schedule.
- 6.0 Contractor's Invoicing and Payment Terms:
- 6.1 Invoicing: Contractor will furnish Owner with a detailed invoice of the number of billable items and amount due on a bi-weekly basis. If Owner disputes any invoice item, Owner will give Contractor written notice of such disputed item within five (5) days from receipt of the invoice and shall pay Contractor the undisputed portion of the invoice when due.
- 6.2 Payment Terms: Payment is due thirty (30) days from the invoice date. Owner shall pay Contractor the amount due upon receipt of the invoice. A service charge of the lesser of one and one-half percent (1½%) per month or the highest amount legally permitted will be added to all accounts balances not paid within thirty (30) days. Notwithstanding any language to the contrary, this service charge shall be governed by the laws of the State of Georgia.
- 7.0 Commencement of Work and Project Schedule:
- 7.1 Commencement of Work: Contractor shall not commence the Work until it has received written notice from Owner to proceed.

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7.2 **Project Schedule:** Contractor shall perform the Work in accordance with the Contract Documents, specifying the dates and time periods by which specified portions of the Work shall be completed, which shall either be as previously agreed and included in the Contract Documents, or as mutually agreed prior to commencement of the Work. Should either Party reasonably desire changes to the Contract Documents at any time due to a *Force Majeure*, as defined in Section 21.0, the Parties shall promptly discuss such changes and use their best efforts to prepare modified Contract Documents mutually acceptable to them. The current applicable Contract Documents as approved by Contractor and Owner shall be signed and dated by authorized representatives of each Party and shall constitute the Contract Documents for purposes of this Agreement. Except as may be required pursuant to Section 22.0, no change to the Contract Documents shall be effective unless mutually agreed to by the Parties and set forth in a written agreement signed by both of them.

8.0 **Project Scope and/or Schedule Changes:** Any project scope and/or schedule change must be mutually agreed to by both Owner and Contractor. Procedures for establishing a change to either the project scope or schedule or both will be accomplished in accordance with the Contract Documents and must be agreed to, in writing, by both Parties. Based on the change(s) made to the Contract Documents, prices may be subject to change.

9.0 **Deliverables and Owner's Acceptance of Data:**

9.1 **Data Deliverables:** For the purposes of this Agreement, "Data Deliverables" shall be defined as all Structure data, studies, reports, sketches, drawings, and other required documentation collected, prepared, and/or created during Contractor's performance of the Work as required and defined in the Contract Documents. All Data Deliverables shall conform to the specifications and acceptance criteria set forth in the Contract Documents at the time of delivery. In particular, data to be delivered by Contractor as part of the Data Deliverables described in the Contract Documents shall be delivered to Owner in accordance with delivery frequencies outlined in the Contract Documents. Contractor's Data Deliverables will be further specified and defined in the Contract Documents.

9.2 **Owner's Acceptance of Data:** Unless otherwise specified in the Contract Documents, Owner shall have ten (10) business days following receipt of each Data Deliverable to accept or reject such Data Deliverable based on the specifications and acceptance criteria set forth in the Contract Documents. Owner shall give Contractor written notice of rejection of any Data Deliverable specifying the reasons the acceptance criteria have not been satisfied. Any Data Deliverable not rejected by Owner in writing within ten (10) business days from delivery will be deemed accepted.

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- 10.0 Project Pricing Assumptions: Assumptions used in developing the project scope and associated pricing may be set forth in the Contract Documents. The pricing set forth in the Contract Documents is firm unless otherwise specified within the Contract Documents.
- 11.0 Additional Owner Obligations: Owner shall: (i) be responsible for supplying all Source Materials required for the completion of the Work in a timely and continuous fashion so as to permit Contractor to perform the work in accordance with the Contract Documents; (ii) examine all Contract Documents, Data Deliverables, and other documents pertinent to the Work which are presented to Owner by Contractor and render in any necessary decisions in writing within a reasonable time so as not to delay Contractor's performance of the Work; (iii) designate a Project Manager to act as its representative with respect to this Agreement who shall be given complete authority to transmit instructions, receive information, execute change orders and/or supplemental agreements, and interpret and define Owner specifications with respect to the Work (Owner shall give Contractor written notification of any change in the designation of the Project Manager); and (iv) assist Contractor in obtaining approval of necessary permits from all governmental authorities or agencies having jurisdiction over the type of Work to be performed by Contractor; provided however, Contractor shall be primarily responsible for obtaining such approval and permits.
- Should Owner fail to comply with any of the undertakings contained in the foregoing paragraph, Contractor will be entitled to an extension of time of completion for a period equal to the delay, if any, caused by the failure of Owner to comply with such undertakings, provided Contractor shall have notified Owner in writing of its desire to extend the time of completion in accordance with the foregoing; should such delay cause an increase in costs to Contractor, Contractor shall be reimbursed by Owner for such costs.
- 12.0 Termination: Either Party may terminate this Agreement upon thirty (30) days written notice served upon the other Party by registered mail. Upon expiration of such thirty (30) day period, all Work under this Agreement shall cease. Upon termination, Contractor shall issue a final invoice and Owner shall pay Contractor for all Work performed through the end of the thirty (30) day notice period.
- 13.0 Independent Contractor: Contractor shall at all times be an independent contractor for all purposes under this Agreement, including without limitation in connection with the performance of labor and services under this Agreement.
- 14.0 Compliance with Laws: Contractor shall promptly pay all wages due to its employees, shall obtain all licenses and permits required by law and shall otherwise comply with all ordinances, laws, orders, rules, directives and regulations made by any governmental authority or regulatory body pertaining to the Work.

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15.0 Contractor's Insurance: Throughout the term of this Agreement, Contractor shall maintain in full force and effect, in amounts reasonably satisfactory to Owner and otherwise in compliance with applicable law, the following insurance coverages: workers' compensation, commercial general liability (including public liability, personal injury, property damage and contractual liability) and automobile liability. Prior to the commencement of the Work, Contractor shall furnish Owner with a certificate evidencing said coverages. Notwithstanding any language to the contrary, any insurance coverage provided by Contractor shall not cover Owner for any negligent acts or omissions of Owner, its employees or agents.

16.0 Indemnification:

16.1 Contractor Indemnification: Contractor shall indemnify, defend and hold harmless Owner, its officers, employees, representatives and agents, from and against all liability, loss, damage or expense resulting from any claim, suit or action for personal injury (including death) or damage to property caused by or arising out of any negligent act or negligent failure to act by Contractor, its employees, or agents, in connection with the performance of the Work except for clearance violation assessments performed by Contractor. In the event of the joint and concurrent negligence of Contractor and Owner, each Party shall be responsible for the percentage of negligence attributed to it by agreement between the parties or in a court of competent jurisdiction. Notwithstanding any other language to the contrary, in no event shall Contractor be responsible for or be required to defend, indemnify or hold harmless Owner from and against any claim for personal injury (including death) or damage to property or loss of use thereof which occurs more than one (1) year after completion of the Work. Owner agrees to give Contractor written notice of any claims received within ten (10) days after Owner first discovers or receives notice of a claim. If Owner fails to provide such notice, Contractor shall not be required to defend, indemnify, or hold harmless Owner.

16.2 Owner Indemnification: Owner shall indemnify, defend, and hold harmless Contractor from and against any and all claims, actions, judgments, settlements, losses, damages, costs and expenses, including reasonable attorneys' fees, arising from or related to any allegation that (i) any of Owner's documents, information, data, or instructions to use systems or methodologies furnished, delivered or made available to Contractor in connection with the performance of the Work contain any material errors, omissions or inaccuracies that are unknown to Contractor and/or (ii) is in violation of, or contributes to the violation of, any patent, copyright, trade secret or other proprietary right of a third party. Further, Owner shall indemnify, defend, and hold harmless Contractor, its officers, employees, representatives and agents, from and against all liability, loss, damage or expense resulting from any claim, suit or action for personal injury (including death) or damage to property caused by or arising out of clearance violation assessments performed by Contractor. Contractor agrees to give Owner prompt written notice of any claims received.

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17.0 Warranty:

17.1 Contractor's Warranty: Contractor warrants to Owner that (i) all Work provided under this Agreement shall be performed in a skillful and workmanlike manner and (ii) all Data Deliverables, at the time they are delivered to Owner, shall comply with all specifications and acceptance criteria set forth in the Contract Documents. Contractor further represents and warrants to Owner, for a period of six (6) months following Owner's acceptance of the each Data Deliverable, that the Data Deliverable(s) will conform to the specifications set forth in the Contract Documents and shall be free of material errors and omissions, provided that neither Owner nor any other party has materially altered any such Data Deliverable in any way and no such Data Deliverable has been altered or affected in any way by being loaded onto or maintained on Owner's computer system. If any Data Deliverable is found not to conform to the specifications, Contractor shall correct such error or omission without cost to Owner.

17.2 Warranty Disclaimer; Limitation of Liability: EXCEPT AS EXPRESSLY PROVIDED IN SUBSECTION 17.1, CONTRACTOR MAKES NO WARRANTIES WHATSOEVER WITH REGARD TO THE WORK OR DATA DELIVERABLES, EXPRESS OR IMPLIED, STATUTORY OR OTHERWISE, INCLUDING WITHOUT LIMITATION THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE AND ANY AND ALL WARRANTIES ARISING FROM A COURSE OF DEALING OR USAGE OF TRADE. IN NO EVENT SHALL CONTRACTOR, ITS AFFILIATES, OR ANY SUBCONTRACTOR OR SUPPLIER OF CONTRACTOR, BE LIABLE FOR ANY SPECIAL, INDIRECT, INCIDENTAL OR CONSEQUENTIAL DAMAGES OR ANY DAMAGE WHATSOEVER RESULTING OR ARISING FROM THE LOSS OF USE, DATA, PROPERTY, EQUIPMENT, GOOD WILL OR PROFITS, INCREASED COSTS OR CLAIMS OF CUSTOMERS OF OWNER. FURTHERMORE, THE TOTAL CUMULATIVE LIABILITY OF CONTRACTOR AND ITS SUBCONTRACTORS AND SUPPLIERS ARISING FROM THE PERFORMANCE OR A FAILURE TO PERFORM WORK PURSUANT TO THIS AGREEMENT, WHETHER IN TORT, CONTRACT, STRICT LIABILITY, OR OTHERWISE, INCLUDING ALL EXPENSES INCURRED OR PAYABLE BY CONTRACTOR IN SATISFACTION OF ITS INDEMNIFICATION OBLIGATIONS UNDER THIS AGREEMENT, SHALL NOT EXCEED THE TOTAL FEES PAID TO CONTRACTOR PURSUANT TO THIS AGREEMENT.

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- 18.0 **Confidentiality:** The terms of this Agreement shall remain confidential and shall not be disclosed by either Party to any person without the consent of the other Party or as may be required by law or order of a court of competent jurisdiction. The Parties acknowledge that, in the course of this Agreement, they may have access to and/or be in possession of Confidential Information of the other Party. "Confidential Information" shall mean information regarded by that Party as confidential, including without limitation information relating to its past, present or future research, development, sales and marketing, financial or business affairs and any proprietary products, materials or methodologies. Each Party shall hold in strict confidence, in the same manner as it holds its own Confidential Information of like kind, all Confidential Information of the other Party which may be disclosed to it or to which it may have access. Access to Confidential Information shall be restricted to those of each Party's personnel who have a need to know such information and its use shall be limited to the performance of this Agreement. The foregoing shall not prohibit or limit either Party's use of information of the other Party (including without limitation ideas, concepts, know-how, techniques and methodologies) which: (i) was previously known to it; (ii) was or is independently developed by it; (iii) was or is acquired by it from a third party having no obligation of confidentiality regarding the information; or (iv) is, or becomes, publicly available through no breach by it of this Agreement, or (v) is disclosed pursuant to law or the order, requirement or request of a court or government authority. This Section 18.0 shall survive termination of this Agreement for any reason.
- 19.0 **Ownership:** The Parties agree and acknowledge that Contractor may use proprietary materials of Contractor or third Parties in the preparation of the Work ("Proprietary Items") and that Owner shall not obtain any ownership rights in the Proprietary Items. All Work conceived or developed by Contractor in connection with Contractor's provision of services under this Agreement shall belong to the Contractor. Owner shall execute all documents that may be reasonably requested by Contractor in order to vest in Contractor all right, title and interest in the Work. Notwithstanding the foregoing, any Confidential Information of Owner that is used by Contractor in connection with the Work shall remain Confidential Information of the Owner. Subject to the terms of this Agreement, Contractor shall grant Owner a perpetual, royalty free license to use the Work provided that Owner agrees to treat all such materials as Confidential Information in the same manner that Owner treats its own confidential material, but in no event less than a reasonable degree of care. This Section 19.0 shall survive the termination of this Agreement for any reason.
- 20.0 **Notices:** All notices and other communications required or permitted under this Agreement shall be in writing and shall be deemed to have been duly given: (i) when delivered by hand or confirmed facsimile transmission; (ii) one day after delivery by receipted overnight delivery; or (iii) four days after being mailed by certified or registered mail, return receipt requested, with postage prepaid to the appropriate address set forth in this Agreement or to such other person or address as either Party shall furnish to the other Party in writing in accordance with this Section 20.0.

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- 21.0 **Force Majeure**: Except as specifically provided in this Agreement, neither Party shall be liable for any delays or other nonperformance resulting from circumstances or causes beyond its reasonable control and anticipation, including fire or other casualty, act of God, strike or labor dispute, war or other violence, acts of third Parties not within such Party's reasonable control and anticipation, or any law, order or requirement of any governmental agency or authority (collectively "Force Majeure"); provided however, that the Party whose nonperformance is excused under this Section 21.0 shall take commercially reasonable steps to circumvent such events of Force Majeure and shall resume performance immediately upon the cessation of the condition of Force Majeure which prevented such performance. In the event of a Force Majeure, Contractor's price schedule shall be automatically modified to adjust for any delays occasioned by the Force Majeure.
- 22.0 **Severability**: If any term or provision of this Agreement is held illegal or unenforceable by a court of competent jurisdiction, all other terms of this Agreement shall remain in full force and effect, and the illegal or unenforceable provision shall be deemed struck. In the event that the stricken provision materially affects the rights, obligations or duties of either Party, Owner and Contractor shall substitute a provision by mutual agreement that preserves the original intent of the Parties as closely as possible under applicable law.
- 23.0 **Jurisdiction/Choice of law**: The Parties hereby irrevocably submits to the jurisdiction of the United States District Court for the Northern District of Georgia or the Superior Court of Fayette County, Georgia, in any action or proceeding arising out of or relating to this Agreement. This provision shall survive the termination of this Agreement for any reason. The Parties further agree that this Agreement and all matters arising out of, directly or indirectly, or related to this Agreement will be governed by and interpreted in accordance with the laws of the State of Georgia.
- 24.0 **Miscellaneous**: This Agreement constitutes the entire agreement between the Parties relative to the subject matter contained in this Agreement. None of the terms of this Agreement shall be changed, waived, superseded or supplemented, except in a written document signed by the Parties hereto. Each Party acknowledges that it has participated in the negotiation and preparation of this Agreement and has had the opportunity to have its counsel review this Agreement. Therefore, neither Party shall be deemed to have drafted this Agreement and the customary rule of construction resolving ambiguities in the language against the drafting Party shall not apply.

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IN WITNESS WHEREOF, the Parties, by their duly authorized representatives, have executed this Agreement as of the last date set forth below.

OSMOSE UTILITIES SERVICES, INC.
(Contractor)

CITY OF FLORENCE, ALABAMA
(Owner)



Signature

Signature

Anthony G. Matt, P.E.

Print Name

Print Name

VP-Commercial Operations

Title

Title

July 31, 2025

Date

Date