



TO: The City Council

FROM: Rahat Bari, City Engineer

DATE: October 8, 2021

RE: Resolution 21-100-R Authorizing a contract with Osmose to perform pole inspection and treatment in Batavia for an amount not to exceed \$207,900 which includes 10 percent contingency amount

Background:

The city has approximately 2,757 poles which provide transmission and distribution services for our electrical customers. Besides, these poles are also used by other utility companies such as AT&T, Comcast, Metronet, Wow/Verizon to provide telephone/cable/internet services to these customers.

Discussion

In April 2021, the city invited bids from prospective bidders to provide inventory, inspection, evaluation, preservative treatment, tag placement identification, for existing wood distribution and transmission poles. Staff identified that we needed to perform a comprehensive evaluation of our electric pole system to identify all attachments, identify all poles that need repair or replacement. Besides we also wanted to gather all information that will help our crews to make repairs quickly. Unfortunately, we did not receive any bid from our prospective bidders. Hence, we reached out to bidders and try to identify what prohibited them from bidding on this project. Some contractors informed us that they are too busy at this time. Some of them also told us that they are not equipped to perform all tasks that we are asking them to do. Only Osmose reached out to the city informing us that they can perform most tasks but not all tasks that we identified in our bid. As a reference, Osmose performed a pole inspection for the City in 2012-2013.

Due to lack of interest from prospective bidder, staff started discussion with Osmose to identify which tasks they can perform and which they can't. Osmose informed us that they have two different crews- One crew can perform pole inventory and another crew can perform pole inspection and treatment. Pole inventory is mostly defined as which utility companies are attached to each pole and then collecting some basic information about the pole such as height and class of the pole, equipment on pole, condition of equipment, and a photo of the pole. Pole inspection and treatment involves a different set of crews which will perform visual inspection and if needed perform treatment on deteriorated poles to extend the life of those poles. They will also identify poles which are beyond its useful life and label those poles as "reject" poles for replacement.

This authorization is for the Pole inspection and treatment hence we will focus on that task from hereon. A similar memo and resolution (21-099-R) are also presented to the City Council for pole inventory and Audit.

In 2012-2013, the city hired Osmose to perform wooden pole inspection throughout the city. Based on the inspection, the city has performed pole replacement that were identified by Osmose. Typically, a pole inspection is completed every 10 years. Hence, it is about time to get wooden pole inspection

completed again in 2022. Besides, when pole is inspected, the crew will treat the poles with different chemicals if an internal decay is present and this treatment will extend if the life of the pole. The crews will also identify the poles that are beyond their service life and notify the city to replace those. Based on this inspection, the electrical division will formulate a pole replacement program for next 5-10 years. For the City Council's reference, Osmose proposal is attached to this memo. The proposal lists different type of tests and treatment that will be performed for various pole depending on the condition of the pole. Besides, the inspection crew will also collect the GPS location of each pole which will help the city to verify and update the pole location in the City's GIS system.

It is quite difficult to predict what type of treatment and tests will be performed on each pole as it depends on the condition of the pole however it is safe to assume that all poles will not require the highest unit cost \$69.31. The engineer's estimate for this project is \$300,000 which includes this task plus the pole inventory/audit. The cost of pole inventory is \$89,495. Due to the uncertainty of pole condition and different treatment for poles, staff requests that the City Council approves this project for \$207,900 which is highest unit cost multiplied by the number of poles plus the 10 percent contingency amount. Staff is confident that the final cost of this task will be below that however to make sure we have the flexibility in performing all tests and treatment for each pole, staff is requesting this amount authorization. This project is in 2021 budget under account number 21-61-6435. Due to the winter weather condition upon us, staff anticipates that the work will be performed between March and June 2022. We have included this amount in 2022 budget under the same account and showed that this money will not be spent in 2021.

Staff recommendations:

Staff is recommending Resolution 21-100-R authorizing a contract with Osmose to perform pole inspection and treatment in Batavia for an amount not to exceed \$207,900 which includes 10 percent contingency amount.

Attachments:

1. Resolution 21-100-R
2. Contract

**CITY OF BATAVIA, ILLINOIS
RESOLUTION 21-100-R**

**AUTHORIZING A CONTRACT WITH OSMOSE TO PERFORM POLE INSPECTION AND TREATMENT IN
BATAVIA FOR AN AMOUNT NOT TO EXCEED \$207,900 WHICH INCLUDES 10 PERCENT
CONTINGENCY AMOUNT**

WHEREAS, the City of Batavia owns and operates an electric utility whereby it purchases wholesale power and resells same to its citizens; and

WHEREAS, the City of Batavia owns and operates an electric transmission and distribution network; and

WHEREAS, the City of Batavia has identified the need to perform an inspection and treatment of its wooden pole system; and

WHEREAS, the City has asked Osmose to provide a cost to perform the pole inspection and treatment; and

WHEREAS, Osmose of Peachtree City, Georgia has submitted unit costs for different inspection and treatment; and

WHEREAS, Osmose is qualified to perform the task;

NOW, THEREFORE, BE IT RESOLVED, by the Mayor and City Council of the City of Batavia, Kane and DuPage Counties, Illinois, as follows:

SECTION 1: That the Mayor and City Clerk are hereby authorized to execute a contract, attached hereto, with Osmose for an amount not to exceed \$207,900 which includes 10 percent contingency amount.

CITY OF BATAVIA, ILLINOIS RESOLUTION 21-100-R

PRESENTED to the City Council of the City of Batavia, Illinois, this 18th day of October 2021.

PASSED by the City Council of the City of Batavia, Illinois, this 18th day of October 2021.

APPROVED by me as Mayor of said City of Batavia, Illinois, this 18th day of October 2021.

Jeffery D. Schielke, Mayor

Ward	Aldersperson	Ayes	Nays	Absent	Abstain	Aldersperson	Ayes	Nays	Absent	Abstain
1	Baerren					Solfa				
2	Leman					Wolff				
3	Ajazi					Chanzit				
4	Malay					Connelly				
5	Uher					Beck				
6	Cerone					Russotto				
7	Vogelsinger					Miller				
Mayor Schielke										
VOTE:		Ayes	Nays	Absent	Abstentions					
Total holding office:		Mayor and 14 aldermen								

ATTEST:

Kate Garrett, City Clerk



October 18, 2021
Re: Pole Inspection and Treatment – Osmose

AGREEMENT

THIS AGREEMENT, made this 18 day of October, 2021 by and between the CITY OF BATAVIA, (hereinafter referred to as the “City”), and Osmose, (hereinafter referred to as the “Company), with regard to certain services in connection with the **Pole Inspection and Treatment** Project (hereinafter referred to as the “Project”).)

NOW THEREFORE, the City and the Company, in consideration of the mutual covenants hereinafter set forth, agree to as follows:

1. The Company agrees to perform services in connection with the Project as hereinafter stated. The Company shall at all times observe and comply with all laws, ordinances, and regulations of the federal, state, and local governments, which may in any manner affect the preparation of proposals or the performance of the Agreement.
2. The Company has made a proposal to the City, dated June 10, 2021, attached hereto Exhibit 1 and expressly made a part hereof.
3. This contract will constitute the entire agreement and understanding by and between the parties hereto, and it shall not be considered modified, altered, changed, or amended in any respect unless done so in writing with signatures by both the City and the Company.
4. The terms and conditions of this agreement will be the sole terms and conditions followed for this Agreement, unless otherwise approved in writing by the City Attorney and attached as an exhibit to this agreement. Any and all terms and conditions contained in Company’s Proposal will be superseded by the terms and conditions of this agreement.
5. The Company shall obtain, at its own expense, all permits and licenses which may be required to complete the Agreement, and/or required by federal, state, and local regulations and laws.
6. The City does not discriminate on the basis of handicapped status in the admission of, access to, or treatment of employment in its programs and activities.
7. Illinois Prevailing Wages: To the extent the proposed contract calls for the construction of a “public work,” within the meaning of the Illinois Prevailing Wage Act, 820 ILCS 130/.01 *et seq.* (“the Act”), Contractor shall not pay less than the prevailing rates of wages to all laborers, workmen, and mechanics performing work under this contract, and shall comply with the requirements of the Illinois Wages of Employees on Public Works Act 820 ILCS 130/1-12, to the extent they are applicable, including, without limitation, the submission of certified monthly payroll reports as required by 820 ILCS 130/5. The contractor is advised that failure to timely submit such reports shall be cause for the withholding of payments otherwise due the contractor until compliance with the reporting requirements is achieved. The current Illinois Department of Labor Prevailing Wage Rates for the County of Kane are available at their website <http://www.state.il.us/agency/idol/>. Prevailing wage rates are subject to revision monthly. Copies of the current prevailing wage rates are also available at the Kane County Purchasing Department, 719 Batavia Avenue, Geneva, Illinois.



October 18, 2021
Re: Pole Inspection and Treatment – Osmose

Any bond furnished under this contract shall include such provisions as will guarantee the faithful performance of such prevailing wage clause as provided by the contract.

The Contractor and each of his Sub-Contractors shall pay each of his employees engaged in work on the project under this Contract in full (less deductions made mandatory by law) not less often than once each week.

If a contractor or subcontractor deems the work is not subject to the Act, the contractor or subcontractor shall then submit to the City, a letter indicating receipt of this notice and their determination that the Act does not apply. If the contractor or subcontractor believes the work is not subject to the Prevailing Wage Act, and it is later determined by the Illinois Department of Labor or a court of competent jurisdiction that prevailing wages should have been paid, the contractor shall indemnify and hold the City harmless therein for all costs and penalties incurred by the City related to the violation, including reasonable attorneys fees incurred by the City to defend such an action.

8. Any payment made to the Company shall be strictly on the basis of quantum meruit. The Company shall submit to the City a detailed breakdown of hourly rates billed to date with each pay request. The detailed breakdown shall be based on the hourly rate breakdown contained in the approved proposal. The City will pay the Company for the performance of the Agreement as follows:
 - a. Monthly payments based on actual work satisfactorily completed, less 10% retainage until final completion of the work
 - b. The total Agreement payment will not exceed \$189,000.
 - c. Additions or deductions to the approved total amount for services must be authorized in writing by the City. Any out of scope work must be authorized in writing by the City. Any work performed without written approval from the City shall be solely at the expense of the Company.
 - d. Final payment to the Company will be made once the project has been completed, all paperwork completed and turned into the City of Batavia and/or State of Illinois, and approved with the State of Illinois and/or the City of Batavia.
9. The Company shall perform those phases of the Project to which this Agreement applies, and shall give consultation and advice to the City during the performance of the services.
10. The Company shall secure and maintain in force throughout the duration of this Agreement, Comprehensive General Liability including Products Liability/Completed Operations insurance naming the City as an additional insured written on an occurrence basis with a minimum coverage of \$1,000,000 per occurrence and \$2,000,000 policy limit, including Broad Form Contractual Liability insurance, in an amount not less than \$1,000,000 per occurrence and \$2,000,000 policy limit subject to the terms and conditions of the policy. Additional insured status will be provided on ISO Form CG 20 10 12 19. The City's status as additional insured shall only apply to the alleged negligent acts or failure to act by Company.



The Company shall secure and maintain in force throughout the duration of this Agreement, Automobile Liability insurance in an amount not less than \$1,000,000 combined single limit. Said insurance is to be extended to cover hired and non-owned vehicles.

The Company shall secure and maintain in force throughout the duration of this Agreement, Umbrella or Excess Liability coverage of \$2,000,000.

The Company shall secure and maintain in force throughout the duration of this Agreement, Workers' Compensation insurance, as required by statute, by an insurance company licensed to write worker's compensation in the State of Illinois. Employer's Liability, in an amount not less than \$500,000 each accident, \$500,000 disease-policy limit and \$500,000 disease-each employee.

The insurance provided by Company shall be primary, and not contributory to any insurance purchased by the City. All insurance policies required by this contract shall be underwritten by insurance companies with a minimum A.M. Best rating of A. The certificate of insurance shall provide that it will not be canceled, reduced, or materially changed without providing the City thirty (30) days advance notice, via certified mail.

The Company shall not commence work under this contract until they have obtained all insurance required and such insurance has been approved by the City, nor shall the Company allow any subcontractors (hereafter Subs) to commence work on their subcontract until the same insurance has been obtained by the Sub. The Company and their Subs shall maintain all insurance for not less than one (1) year after completion of this contract.

If the Company is providing architectural, engineering, or surveying services, Company shall also file a certificate of insurance for professional liability, errors and omissions coverage subject to final acceptance by the City of said coverage.

In the event the City requires contractors or subcontractors working on City projects to acquire and provide proof of insurance covering public liability, death, and property damage naming the City as an insured, the City shall require said contractors or subcontractors to name the Company as an additional insured.

11. The Company shall provide the services as required herein in accordance with the Project Schedule.
12. The Company shall attend conferences and visit the site of the work as may be outlined in the Request for Proposal at any reasonable time when requested to do so by the City.
13. The Company represents and warrants that they are technically qualified and entirely conversant with the requirements of this Project; and that they have sufficient properly trained, organized, and experienced personnel and/or subcontractors to perform the services enumerated herein.
14. The City and the Company each binds themselves and their partners, successors, executors, administrators, and assigns to the other party of this Agreement and to the

partners, successors, executors, administrators, and assigns of such other party, in respect to all covenants of this Agreement; except as above, and as noted in the attachments, neither the City nor the Company shall assign, subcontract, or transfer their interest in this Agreement without the written consent of the other. Nothing herein will be construed as creating any personal liability on the part of any officer or agent of any public body, which may be a party hereto, nor will it be construed as giving any rights or benefits hereunder to anyone other than the City and Company.

The Company may subcontract portions of the work upon written approval from the City. These Subs shall conform, in all respects, to the applicable provisions specified and shall further be subject to approval by the City. The Company shall identify all proposed Subs who will furnish services under the terms of this proposal. The work to be done by the Subs must be outlined in detail in the proposal submitted by the Company. None of the services to be furnished by the Company may be subcontracted, assigned, or transferred to any other party or parties without the written consent of the City. The consent to subcontract, assign, or otherwise transfer any portion of the services to be furnished by the Company will not be construed to relieve the Company of any responsibility for the fulfillment of this Agreement. Any request for payment to the company, for work that was subcontracted, must be supported with a waiver of lien and contractor's affidavit indicating the subcontractor has been paid and waives any lien on the project or funds for the project.

15. The Company shall indemnify, defend, and hold harmless the City, its officers, agents and employees, from and against any and all claims, losses or liability, or any portion thereof, arising from injury or death to persons or damage to property occasioned by the negligent act, omission, or failure of the Company, its officers, agents and employees, in performing the work required by this Agreement. In the event of joint or concurrent negligence between the Company and the City, 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.
16. The City agrees to review each and every phase of the Project as in the aforementioned proposal in a timely manner. Upon approval of each phase, the Company shall then proceed to the next phase.
17. All drawings, specifications, reports, and any other project documents prepared by the Company specifically for the City in connection with any or all of the services to be furnished hereunder shall be delivered to the City for the expressed use of the City. The Company does have the right to retain original documents, but shall cause to be delivered to the City such quality of documents so as to assure total reproducibility of the documents delivered. All information, worksheets, reports, design calculations, plans, and specifications shall be the sole property of the City unless otherwise specified in the negotiated agreement. The Company agrees that the basic survey notes and sketches, charts, computations, and other data prepared or obtained by the Company pursuant to the Agreement will be made available, upon request, to the City without cost and without restriction or limitations as to their use. All field notes, test records, and reports shall be available to the City upon request.

18. The City reserves the right by written amendment to make changes in requirements, amount of work, or engineering time schedule adjustments. The Company and the City shall negotiate appropriate adjustments acceptable to both parties to accommodate any changes.
19. The City may, at any time by written order, require the Company to stop all or part of the services required by this Agreement. Upon receipt of such an order the Company shall immediately comply with its terms and take all steps to minimize the occurrence of costs allocable to the services covered by the order. The City will pay for costs associated with suspension provided, they are deemed reasonable by the City.
20. The City reserves the right to terminate the whole or any part of this Agreement, upon ten (10) calendar day's written notice to the Company. The City further reserves the right to cancel the whole or part of the Agreement, if the Company fails to perform any of the provisions in the Agreement or fails to make delivery within the time stated. The Company will not be liable to perform if situations arise by reason of acts of God or public enemy, acts of City, fires, pandemics, or floods.
 - a. Should any of the key personnel identified in the Proposal become unavailable to work on the project, and no permanent substitute personnel reasonably satisfactory to the City is provided by the Company within thirty (30) days, and/or no temporary replacement personnel is provided by the Company immediately following the commencement of the subject Key Personnel's unavailability, the City may, at its election, declare such contract terminated and at an end, reserve the right to maintain and action to recover damages arising due to breach of contract
 - b. The City reserves the right to terminate in whole or any part of this contract, upon written notice to the Company, in the event of default by the Company. Default is defined as failure of the Company to perform any of the provisions of this contract of failure to make sufficient progress so as to endanger performance of this contract in accordance with its terms. In the event of default and termination, the City may procure, upon such terms and in such manner as the City may deem appropriate, supplies or services similar to those so terminated.

The Company shall be liable to the City for all reasonable excess costs for such similar supplies or service unless evidence is submitted to the City that in the sole opinion of the City clearly proves that failure to perform the contract was due to causes beyond the control and without the fault or negligence of the Company.

- c. Upon termination, the Company shall cause to be delivered to the City all surveys, reports, permits, agreements, calculations, drawings, specifications, partially and completed estimates, and data, as well as products of computer aided drafting, design, and writing that have been paid for by the City. Cost of termination incurred by the Company before the termination date will be reimbursed by the City only, if prior to the effective termination date, the City receives from the Company a list of actions necessary to accomplish termination and the City agrees in writing that those actions be taken. Upon receipt of the termination notice, the Company shall stop all work until said Agreement is reached.



21. The City agrees to notify the Company at least twenty-four (24) hours in advance of the need for personnel or services.
22. Nothing contained in this Agreement, nor the performance of the parties hereunder, is intended to benefit, nor shall inure to the benefit of, any third party, including the City's Contractors, if any.
23. A notice relating to claims for damages or relating to allegations of default shall be in writing and shall be made by certified or registered mail, postage prepaid, return receipt requested, or reliable overnight courier, to the parties as follows:

If to Company: Jose Villalba
635 Highway 74 S | Peachtree City, GA 30269

If to the City: City of Batavia
Attention: City Clerk
100 North Island Avenue
Batavia, IL 60510

with copies to: City of Batavia
Attention: Rahat Bari
200 N. Raddant Road
Batavia, IL 60510

and: City of Batavia
Attention: City Attorney
100 North Island Avenue
Batavia, IL 60510

24. This Agreement contains the entire agreement between the parties. No other writing, discussion or any other communication about possible terms is to be construed as forming part of the agreement between the parties. Any terms and conditions submitted by the Company as part of its proposal are specifically disavowed and such terms and conditions shall not supersede this Agreement.
25. This Agreement shall be binding upon the partners, heirs, successors, executors, administrators, and assigns of all the parties hereto.
26. This Agreement shall be construed in accordance with the laws of the State of Illinois. Venue for any litigation arising from this Agreement shall be limited to the Courts of the Sixteenth Judicial Circuit, Kane County, Illinois.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed on the date first above written.



October 18, 2021
Re: Pole Inspection and Treatment – Osmose

**CITY OF BATAVIA, an Illinois
Municipality,**

Company,

By: _____
Mayor

By: _____
President

Attest:

Attest:

By: _____
City Clerk

By: _____
Secretary



June 10, 2021

Mr. Rahat Bari
City Engineer
Batavia Municipal Electric Utility
200 N. Raddant Rd.
Batavia, IL 60510

RE: POLE INSPECTION AND TREATMENT PRICING PROPOSAL – 2021

Dear Mr. Rahat Bari:

Osmose is submitting the attached proposal for your approval and acceptance. This price proposal is valid for 90 calendar days from the date of this proposal.

We have included Exhibit A, as this is an integral part of this proposal that outlines the technical specifications we are proposing. Any contract or agreement that results from this proposal shall include Exhibit A, whether or not it is specifically referenced in the contract and should be referenced in any Purchase Order issued for work specified under this contract.

We look forward to working with you on this important project. If this proposal is acceptable, *please sign and return the attached Acceptance of Proposal* so we can schedule crews to begin this project.

COVID-19 presents an unprecedented situation for all business entities. The following provision is intended to protect both parties throughout the performance of a contract, purchase order or subcontract resulting from this proposal: Notwithstanding any provision(s) of this Proposal, if as a direct or indirect result of any virus, disease, contagion, including but not limited to COVID-19 (individually or collectively, "Epidemic"), Contractor's work is delayed, disrupted, suspended, or otherwise impacted, including, but not limited to, by (1) disruptions to material and/or equipment supply; (2) illness of Contractor's workforce and/or unavailability of labor; (3) government quarantines, shelter in-place orders, closures, or other mandates, restrictions, and/or directives; (4) Owner restrictions and/or directives; and/or (5) fulfillment of Contractor's contractual or legal health and safety obligations associated with an Epidemic; then Contractor shall be entitled to an equitable adjustment to the Contract schedule and duration to account for such disruptions, suspensions, and impacts. To the extent COVID-19 and the impacts thereof result in an increase in the price of labor, materials, or equipment used in the performance of this Contract, Contractor shall be entitled to an equitable adjustment to the Contract price for such increases, provided Contractor presents satisfactory documentation of such increases and evidence of Contractor's reasonable efforts to find alternative sources of material or equipment supply and/or labor at the original/nonimpacted prices and/or estimates. No such equitable adjustments to the schedule or pricing shall be made unless disclosed to the non-requesting party prior to the incurrence of the costs or conditions necessitating such equitable adjustments. In such event, the non-requesting party shall have the option to cancel the portion of the work affected, or to agree to such equitable

adjustments in writing. In the event of mutual agreement, such equitable adjustments shall become a portion of the contract.

If you need further assistance or have any questions concerning this proposal, please do not hesitate to contact Kevin Kinley at (515) 205-3305.

Sincerely,

A handwritten signature in black ink that reads "JOSE VILLALBA". The signature is written in a cursive style with a large, stylized initial "J".

Jose Villalba
Vice President-Contracts

Attachment
JV/ch

C: File

Price Schedule 1

Effective 06/10/2021 - 12/31/2021

Line	Item	Price
1	VISUAL	\$ 17.86
2	PARTIAL EXCAVATE INSPECTION	\$ 23.28
3	EXTERNAL TREAT (MP-500® EXT)	\$ 69.31
4	EXCAVATED REJECT	\$ 64.98
5	SOUND AND BORE TEST	\$ 19.71
6	LARGE POLE ADDER (500) 34.5 KV	\$ 54.16
7	INTERNAL TREAT (HOLLOW HEART® CB)	\$ 32.38
8	MITC-FUME® - PER TUBE	\$ 15.71
9	ROCK BACKFILL	\$ 30.80
10	PRIVATE PROPERTY	\$ 10.72
11	INSTALL GUY MARKER - CUSTOMER	\$ 11.91
12	GPS READING 0-10 METERS	\$ 2.05

Pricing Notes

The GPS data (per structure) item includes a GPS point with an accuracy level of one to ten meters (1-10 meters). One attempt will be made to collect the GPS point. Osmose will not charge for any unattainable data collection. If requested however, Osmose field technicians can return to any pole location, for an hourly rate, to recollect data.

Rock backfill adder will be utilized on poles where rock backfill is encountered in the inspection excavation process. The adder will cover the additional labor costs to remove the rock backfill for the inspection process.

Unit rates as submitted assume compliance with Kane County prevailing wage rates.

Acceptance of Proposal

To accept the attached proposal as written and authorize the work to be performed, please fill out, sign and return this page via email to Osmosecontracts@Osmose.com. This price proposal is valid for 90 calendar days from the date of the proposal.

SIGNATURES

We hereby accept the attached proposal as written and authorize Osmose Utilities Services, Inc. to perform the work. Osmose will perform the work in accordance with the terms and conditions under your General Services Agreement dated December 13, 2012.

AUTHORIZED SIGNATURE	
PRINTED NAME	
DATE	
COMPANY NAME	Batavia Municipal Electric Utility

OSMOSE CONTACT

If you have any questions or would like to discuss this proposal in more detail, please contact:

NAME	Kevin Kinley
TITLE	Director Business Development
PHONE	(515) 205-3305
JOB #	1034779
PROJECT DESCRIPTION	POLE INSPECTION AND TREATMENT