

**CONTRACT BETWEEN**

CENTRAL LOCATING SERVICE, LTD.

AND

**NASSAU-COUNTY AMELIA UTILITY- UTILITIES**

FOR UNDERGROUND FACILITIES LOCATING AND MARKING SERVICES

This Contract is made and entered into this 6th day of October, 2003, by and between Central Locating Service, LTD., a New York Corporation with offices located at 4630 Paragon Park Road, Suite 100, Raleigh, North Carolina 27616, ("Contractor"), and NASSAU-COUNTY AMELIA <sup>UTILITIES</sup> UTILITY with an office located at 5390 First Coast Highway, Fernandina Beach, Florida 32034, ("Customer").

**-RECITALS-**

The Contractor and the Customer desire to enter into an agreement whereby the Contractor will be an independent contractor performing such underground facilities locating and marking services as the Customer may from time to time request. NOW THEREFORE, in consideration of the mutual promises, the work to be performed and the payments to be made, the parties hereby agree as follows:

The Contractor, acting as an independent contractor and not as an agent or employee of the Customer, agrees to furnish labor, supervision, tools, equipment and transportation as required to perform underground facilities locating and marking services as requested by the Customer and accepted by the Contractor. In performing such services the Contractor will comply with all applicable federal, state, county and local laws, ordinances and regulations, and will be responsible for obtaining all licenses, permits, inspections and other authorizations required for the Contractor's performance of this Contract.

This Contract is for use by authorized representatives of the contracting parties and their affiliated companies, and may not be disclosed or provided to others without written agreement.

Section I - Definitions

- A. "Agreement": This Contract.
- B. "Business Day": Any day other than Saturday, Sunday or any legal federal, state or local holiday.
- C. "Consumer-Owned Facilities": Any underground facility maintained, but not owned by the Facility Owner
- D. "Excavation": Any operation in which earth, rock or other material on or below the surface of the ground is moved or otherwise displaced by any means [except the tilling of soil less than twelve (12) inches in depth for agricultural purposes, or road and ditch maintenance that does not change the original road grade or ditch flow line].
- E. "Excavation Site": The area where an Excavator intends to or actually performs Excavation.
- F. "Excavator": Any Person who engages directly in Excavation and/or the design of Excavation, and who requests the location of the Customer's Underground Facilities.
- G. "Excavator Notification": Notification given to the Excavator that Underground Facilities are not present at the Excavation Site.
- H. "Facility Owner": The owner of a specific Underground Facility. For purposes of this Contract, the Facility Owner is the Customer.
- I. "Identified, But Unlocatable": An Underground Facility, the presence of which is known, but cannot be field marked with Reasonable Accuracy (as defined in Section I, Paragraph P).
- J. "Locatable Underground Facility": An Underground Facility which can be field marked with Reasonable Accuracy (as defined in Section I, Paragraph O) by using devices capable of identifying and locating the Customer's Underground Facilities within the required range of accuracy, or by use of the Customer's maps and records.
- K. "Locate": The process of detecting Underground Facilities through the use of inductive or conductive equipment, and marking the surface of the ground to identify the existence and location of Underground Facilities.
- L. "Locate Request": Notice of proposed Excavation made by an Excavator to the One-Call Center.
- M. "Marking": The use of flags or paint strips of a minimum of two (2) inches by twelve (12) inches, or other clearly identifiable materials at distances of every fifteen (15) feet, and at

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each divergence from a straight line in accordance with the current marking standards of the American Public Works Association to show the field locations of Underground Facilities with Reasonable Accuracy (as defined in Section I, Paragraph O).

- N. "One-Call Center": A service through which a Person can notify utility companies of proposed Excavation and request field marking of Underground Facilities.
- O. "Person": Any individual, partnership, franchise holder, association, corporation, state, city, county or any subdivision or instrumentality of a state and its employees, agents or legal representatives.
- P. "Reasonable Accuracy": Locating the approximate horizontal location of an Underground Facility (as defined in Section I, Paragraph P) to the specifications required by applicable law.
- Q. "Underground Facility": Any item buried or placed below the surface of the ground for use in connection with the storage or conveyance of water, sewage, electronic communications, cablevision, electric energy, petroleum products, gas, gaseous vapors, hazardous liquids or other substances, including but not limited to pipes, sewers, conduits, cables, valves, lines, wires, manholes, attachments and those parts of poles or anchors below ground.

## Section II - Contractor's Duties and Responsibilities

The Contractor shall:

- A. Provide sufficient qualified staff, office and field equipment (including a Teletype printer or computer compatible with the existing communications system used by the One-Call Center), transportation and supplies sufficient to fulfill its duties under this Contract.
- B. Receive and record Locate Requests from the One-Call Center during Business Days and during the office hours of the One-Call Center (7:00 a.m. through 5:00 p.m. on Business Days).
- C. Retain and safeguard the Customer's location maps and records. Records shall not be disclosed or made available to any Person not approved by the Customer, except as required by law.
- D. Maintain records appropriate to support the invoicing and reporting requirements set forth in Section III. The Contractor agrees to retain such records for a period of three (3) years.

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- E. Provide additional services such as site surveillance and maintenance of marks and stakes if specifically requested to do so by the Customer. Prior to the Contractor's commencement of the additional services, the Customer must specifically approve such additional services and the costs charged will be at the rates specified in Appendix A.
- F. Investigate incidents of damage (referred to Contractor by Customer in accordance with Section IV, Paragraph B) for accuracy of the Locate(s) and submit to the Customer a written report of such investigations. The Contractor will maintain a copy of such written reports for a period of three (3) years. Upon request, the Contractor will give testimonial support in cases deemed necessary by the Customer. The charges for investigation of damage and testimonial support will be billed at the rates specified in Appendix A; provided, however, that if the damage was a result of Contractor's failure to Locate a Locatable Underground Facility with Reasonable Accuracy, then the Contractor shall not be reimbursed for the charges.
- G. When the Underground Facility is Identified, But Unlocatable, the Contractor must contact the Company's representative and advise the representative of the situation. The Company representative will determine the course of action to be taken. If no course of action is successful, the Contractor shall notify the Excavator of the presence of any Identified, But Unlocatable Facility and caution the Excavator that any location information supplied may not be within the definition of Reasonable Accuracy.
- H. Notify the Customer of any discrepancies or omissions in the records or other information provided to the Contractor by the Customer to the extent such discrepancies and omissions can be determined by the Contractor.
- I. Any other provisions of this Contract to the contrary notwithstanding, the Contractor reserves the right to decline any Locate Requests for site surveys and locating and marking services in areas which the Contractor deems impractical to serve because of distance, inaccessibility or other considerations.

Section III – Invoicing, Reporting, and Payment

- A. The Contractor's monthly invoice will include the following:
  - 1. The Customer's name;
  - 2. The period during which the services were performed (the Billing period");
  - 3. The total number of Locate Requests received;

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4. The total number and nature of additional services performed for the Customer;  
and
5. The total charges for the Billing Period.

B. The monthly report to accompany and support the invoice will include an itemized tabulation which shows the following information with respect to each locate request the Contractor received:

1. Ticket number;
2. Locate date;
3. Locations of proposed excavation; and
4. Type of request.

C. All payments are due upon thirty (30) days from the date of the invoice.

#### Section IV - The Customer's Duties and Responsibilities

The Customer shall:

- A. Provide to the Contractor sufficient copies, and updates of the maps and diagrams of the Customer's Underground Facilities for all Excavation Sites, which maps and diagrams will reflect the most current information available to the Customer.
- B. Notify the Contractor IMMEDIATELY of any damage where locating accuracy is in question so the Contractor can conduct a thorough investigation. If not notified within 24-hours of the damage the Contractor is not responsible or liable for any costs associated with the repair to the damaged facility. Contractor is not responsible for Identified, But Unlocatable Facilities.
- C. If Customer is presenting a claim of damages against the Contractor, the invoice will only include the damage-repair costs (no replacement) and any applicable documentation to support all billing items. The Contractor can dispute the claim and/or supporting documentation in writing within seven (7) Business Days by providing the Customer with evidence supporting the Contractor's position.
- D. Make timely payment for invoices as described in Section III above.
- E. Customer shall take steps necessary for the One-Call Center to send all tickets directly to Contractor. Company shall pay the One-Call Center system invoices for ticket transmittals. Company shall forward any direct requests for locates to One-Call Center and/or Contractor.

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Section V - Indemnification; Insurance

The Contractor will indemnify the Customer, and will hold the Customer harmless from: (a) any claims for property damage, death or bodily injury arising from the negligence of its agents or employees in the performance of this Contract; and (b) any claims for property damage, death or bodily injury resulting from the Contractor's failure to Locate a Locatable Underground Facility with Reasonable Accuracy.

The Contractor will maintain insurance coverages in amounts deemed appropriate by the Contractor to provide for any potential liabilities.

Section VI - Revision of Price Schedule

All prices contained in the attached Appendix A shall remain in full force and effect with respect to all work performed during the first twelve (12) months of this Contract. Thereafter, the rates set forth in Appendix A will be adjusted annually to reflect the change in the Consumer Price Index over the immediately preceding twelve (12) month period, which rate adjustment shall be effective as of the anniversary date of this Contract.

Section VII - Term of Contract

Either party, upon thirty- (30) days written notice to the other party, may terminate this Contract. Unless so terminated, this Contract shall continue in effect through October 5, 2004.

Section VIII - Customer's Right to Audit Records

For a period of three (3) years after the completion of the work covered by this Contract, the Customer, its auditor or other authorized representative shall have reasonable access to any accounting records related to the work covered by this Contract.

Section IX - Independent Contractor Relationship

The parties hereby declare that the relationship of the Contractor to the Customer under this Contract is that of an independent contractor. No agent or employee of the Contractor shall be considered an agent or employee of the Customer. The Customer is concerned only with the results obtained under this Contract; the time, manner and means of performing the work are under the sole control of the Contractor.

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Section X - Severability

If any court having jurisdiction declares any term or provision of this Contract void or unenforceable, the remaining terms and provisions shall not be affected thereby but shall continue in full force and effect.

Section XI - Controlling Law

This Contract shall be governed by and interpreted under the laws of the state or commonwealth in which Locate services are performed.

Section XII - Non-Discrimination Agreement

Contractor and Customer shall provide equal employment opportunities. The provisions of Section 2.02 of Executive Order 11246 and the Rules and Regulations issued pursuant to Section 2.01 thereof are hereby incorporated by reference and the parties represent, by signing this Contract, that they will comply with such Executive Order, Rules and Regulations and amendments thereto to the extent the same are applicable.

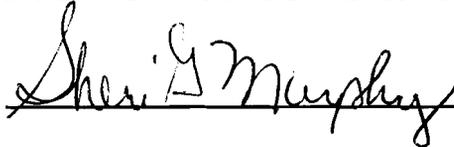
Section XIII - Confidential and Proprietary Information

All information provided by either party to the other pursuant to this Contract is confidential and proprietary to the providing party, and such information shall not be disclosed to any third party except with the prior written consent of the providing party. Neither party shall use the confidential and proprietary information of the other for its own purposes, or for the benefit of any third party, without the prior written consent of the providing party. Without limiting the generality of the foregoing, the parties specifically recognize, stipulate and agree that pricing information under this Contract is highly confidential and proprietary to the Contractor. Any unauthorized disclosure or use of the information in violation of this provision will conclusively be deemed a material breach of this Contract. This provision shall survive termination of this Contract.

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IN WITNESS WHEREOF, the parties have caused duplicate originals of this Contract to be executed by their duly authorized representative as of the day and year first above written.

CONTRACTOR: CENTRAL LOCATING SERVICE, LTD.

By: 

Title: Contract Administrator

Date September 29, 2003

CUSTOMER <sup>9th</sup> NASSAU COUNTY AMELIA UTILITY UTILITIES

By: 

Printed Name: Vickie Samus

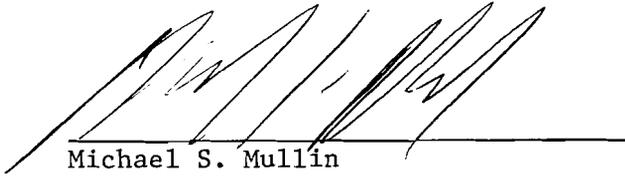
Title: Chairman

Date: October 2, 2003

ATTEST:

Approved as to form by the  
Nassau County Attorney:

  
J. M. "Chip" Oxley, Jr.

  
Michael S. Mullin

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APPENDIX A  
**NASSAU COUNTY AMELIA UTILITY UTILITIES**  
PRICE SCHEDULE

Per Ticket Rate:	\$11.00
Hourly Rate:	\$37.50
Callout Hourly Rate:	\$45.00

**\*\*All Consumer-Owned Locates will be performed on the hourly rate. The Contractor shall not be held liable for damage(s) to these facilities.**

All Surveys, Surveillance and/or Testimonial Support shall be charged at the Hourly Rate, provided the Customer has pre-approved such work.

Damage Investigations (except as specified in Section IV Paragraph B.) shall be charged at the Hourly Rate.

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**NASSAU COUNTY**  
**BOARD OF COUNTY COMMISSIONERS**  
P. O. Box 1010  
Fernandina Beach, Florida 32035-1010

Nick Deonas  
Ansley Acree  
Vickie Samus  
Floyd L. Vanzant  
Marianne Marshall

Dist. No. 1 Fernandina Beach  
Dist. No. 2 Fernandina Beach  
Dist. No. 3 Yulee  
Dist. No. 4 Hilliard  
Dist. No. 5 Callahan

J. M. "Chip" OXLEY, JR.  
Ex-Officio Clerk

MICHAEL S. MULLIN  
County Attorney

VIA FEDERAL EXPRESS

October 2, 2003

Ms. Sheri G. Murphy  
Contract Administrator  
Central Locating Service, LTD.  
4630 Paragon Park Road  
Suite 100  
Raleigh, NC 27616

Dear Ms. Murphy:

Enclosed please find a certified copy of the contract between Central Locating Service, Ltd., and Nassau Amelia Utilities for underground facilities locating and marking services.

Thank you for your assistance in this matter.

Sincerely yours,

J. M. "Chip" Oxley, Jr.  
Ex-Officio Clerk

JMO:jb

Enclosure

CC: Doug Hewett, Utilities Manager

(904) 321-5703, 879-1029, (800) 958-3496

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