

STATE OF FLORIDA  
COUNTY OF WALTON

**AGREEMENT**

This Agreement is made this 13 day of January 2015, by and between CHELCO Services, Inc., of Post Office Box 1387, DeFuniak Springs, Florida 32435, (herein "CSI") and Walton County, Florida by and through its Board of County Commissioners, of 97 Montgomery Circle, DeFuniak Springs, Florida 32435, (herein "WALTON COUNTY").

**RECITALS**

**WHEREAS**, WALTON COUNTY, as an operator of a force main sewer system, and traffic control signals and other devices, requires from time to time the location of underground facilities;

**WHEREAS**, CSI has the manpower and knowledge to locate and mark underground facilities for WALTON COUNTY at competitive rates and on a competitive schedule; and,

**WHEREAS**, WALTON COUNTY desires to engage CSI to perform the services of locating and marking underground facilities for it pursuant to the terms of this Agreement.

**NOW, THEREFORE**, in consideration of the above recitals, the parties agree as follows:

**SECTION 1**

**DEFINITION OF TERMS**

The words and terms used in this Agreement as identified below shall have the following meanings:

A. 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).

B. Excavation Site. The area where an excavator intends to perform or actually

performs excavation.

C. Excavator. Any entity that engages directly in excavation and/or the design of excavation and requests the location of WALTON COUNTY's underground facilities.

D. Notification. Notification given to an excavator that underground facilities are not present at the excavation site.

E. Identifiable But Unlocatable. An underground facility, the presence of which is known, but which cannot be field marked with reasonable accuracy as defined in Section 1(M) of this Agreement.

F. Locatable Underground Facility. An underground facility which can be marked in the field with reasonable accuracy, as defined in Section 1(M) of this Agreement, by using devices capable of identifying and locating underground facilities within the required range of accuracy, or by the use of WALTON COUNTY's maps and records.

G. 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 the underground facilities.

H. Locate Request. Notice furnished to CSI by the One-Call Locator Service Center of a proposed excavation.

I. Design Locate Request. A request received by CSI from a design engineer, architect, surveyor, or planner to locate underground utility facilities for a proposed project by using any one or a combination of the following:

- a. Information obtained solely from a review of utility records.
- b. Information to augment utility records, such as topographic surveying of above-ground utility features.
- c. Information obtained through the use of designating technologies to obtain horizontal underground facility locations.
- d. Information obtained from physically exposing underground facilities.

J. Marking. The use of flags or paint strips of a minimum of two (2") inches by twelve (12") inches or other clearly identified materials a distance of every

fifteen (15') feet and at 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.

K. Normal Working Hours. CSI'S normal working hours for the delivery of services under this Agreement are 7:00 a.m. until 5:00 p.m., Monday through Friday, excluding holidays.

L. One-Call Locator Service Center. A service through which utility companies are notified of a proposed excavation and are requested to make field marking of the utilities underground facilities.

M. Reasonable Accuracy. Locating the approximate horizontal location of an underground facility, as defined in Section 1(E) of this Agreement, to the specifications required by applicable law.

N. 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 2

### CSI'S DUTIES AND RESPONSIBILITIES

It shall be the duty and responsibility of CSI to:

A. Provide sufficient qualified staff, office and field equipment (including a printer or computer compatible with the existing communications system used by the One-Call Locator Service Center), transportation and supplies sufficient to fulfill its duties under this Agreement.

B. Receive and record Locate Requests from the One-Call Locator Service Center during CSI's normal business working hours.

C. Retain and safeguard WALTON COUNTY's location maps and records. Records shall not be disclosed to or made available to any person, firm or

corporation not approved by WALTON COUNTY except as required by law.

D. Maintain records appropriate to support the invoicing and reporting requirements set forth in Section 4 of this Agreement. CSI agrees to retain such records for a period of three (3) years following the termination or expiration of this Agreement.

E. Provide additional services such as site surveillance and maintenance of marks and stakes if specifically requested to do so by WALTON COUNTY. Prior to CSI's commencement of the additional services, WALTON COUNTY must specifically approve such additional services and the costs charged will be at the rate specified in Appendix "A." (Site surveillance services will be charged at the "Jobsite Observation" hourly rate and maintenance of marks and stakes will be charged at the "Locate Rate")

F. Investigate incidents of damage referred to CSI by WALTON COUNTY, in accordance with Section 3(C) of this Agreement, for accuracy of the location of the underground facilities and submit to WALTON COUNTY a written report of such investigations. CSI will maintain a copy of such written reports for a period of three (3) years from the date of the report. Upon request, CSI will give testimonial support in cases deemed necessary by WALTON COUNTY. The charges for investigation of damage and testimonial support will be billed at the hourly rate specified in Appendix "A" for "Jobsite Observation" provided, however, that if the damage was a result of CSI's failure to locate a Locatable Underground Facility with reasonable accuracy then CSI shall not be reimbursed for the charges.

G. When the underground facility is Identifiable But Unlocatable, CSI must contact WALTON COUNTY's representative and advise the representative of the situation. WALTON COUNTY's representative will determine the course of action to be taken. If no course of action is successful, CSI shall notify WALTON COUNTY of the presence of any Identifiable But Unlocatable facilities and caution WALTON COUNTY that any location information supplied may not be within the definition of reasonable accuracy.

H. Notify WALTON COUNTY of any discrepancies or omissions in the records or other information provided to CSI by WALTON COUNTY to the extent such discrepancies and omissions can be determined by CSI.

I. Notwithstanding any other provisions of this Agreement to the contrary, CSI reserves the right to decline any request for location of underground facilities in areas

which CSI deems impractical to serve because of distance, inaccessibility, or other considerations.

J. In the event the County must initiate litigation against CSI in order to enforce compliance with Chapter 119, Florida Statutes, or in the event of litigation filed against the County because CSI fails to provide access to public records responsive to a public record request, County shall be entitled to recover all costs, including but not limited to reasonable attorney fees, costs of suit, and witness fees expended as part of said litigation and any subsequent appeals.

**SECTION 3**  
**WALTON COUNTY'S DUTIES AND**  
**RESPONSIBILITIES**

It shall be the duty and responsibility of WALTON COUNTY to:

A. Provide to CSI sufficient copies of maps and diagrams in the possession of WALTON COUNTY of underground facilities for all excavation sites, which maps and diagrams will reflect the most current information available to WALTON COUNTY.

B. Notify CSI within two (2) hours of any damage where locating accuracy is in question, so that CSI may conduct a thorough investigation.

C. If WALTON COUNTY is presenting a claim for damages against CSI, the claim shall include full documentation to support all damages sustained. Documentation shall include, without limitation, damage estimates/invoices for any repairs made by other contractors employed by WALTON COUNTY. If any dispute arises over the supporting documentation, CSI will notify WALTON COUNTY in writing of the dispute and WALTON COUNTY shall not withhold any claimed amounts from funds due and payable to CSI until thirty (30) days after WALTON COUNTY and/or their subcontractor has complied, in writing, with CSI's request for additional documentation.

D. Make timely payment for invoices as described in Section 4 below.

E. WALTON COUNTY shall take steps necessary for One-Call to send all

tickets directly to CSI. WALTON COUNTY shall pay the One-Call system invoices for ticket transmittals. WALTON COUNTY shall forward any direct requests for locates to One-Call and/or CSI.

**SECTION 4**  
**INVOICING, REPORTING AND**  
**PAYMENT**

A. CSI shall make monthly invoices to WALTON COUNTY for services provided under the terms of this contract, which invoices shall include the following:

- (1) The period during which the services were performed (the billing period);
- (2) The total number of locate requests received;
- (3) The total number and nature of additional services performed for WALTON; and,
- (4) The total charges for the billing period.

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

- (1) The ticket number;
- (2) The date the locate was made;
- (3) The locations of the proposed excavation; and,
- (4) The type of request.

C. All payments are due net 30 of WALTON COUNTY's receipt of an invoice and are subject to a late payment charge of 1.5% per month, or the maximum allowed law, whichever is greater, for any balance in arrears for more than thirty (30) days from the date of the invoice.

**SECTION 5**  
**INDEMNIFICATION AND INSURANCE**

A. CSI agrees to defend, indemnify and hold harmless WALTON COUNTY, its officers, directors/trustees, employees and agents from any and all claims, suits and liabilities, fines and penalties, including reasonable attorney fees and costs arising from:

- (1) The negligence of CSI's agents or employees in the performance of this Agreement; or
- (2) CSI's failure to locate and identify a locatable underground facility with reasonable accuracy.

B. CSI shall, during the duration of this Agreement, at CSI's expense, secure and maintain a policy of public liability insurance with a company authorized to do business within the state of Florida in the sum of one million (\$1,000,000.00) dollars in case of injury or damage to one person, one million (\$1,000,000.00) dollars in the case of injury or damage to more than one person in the same accident or occurrence, and one million (\$1,000,000.00) dollars for property damage. The insurance required by this Agreement shall be procured on or before commencement of the work contemplated by this Agreement. Certificates of Insurance shall be delivered to WALTON COUNTY within ten (10) days from the date of this Agreement and new policies shall be delivered ten (10) days prior to the expiration of the old policy. The name of WALTON COUNTY shall appear as an additional insured under the CSI policy or policies of public liability insurance.

**SECTION 6**  
**PRICE SCHEDULES/REVISION**

All prices contained in the attached Appendix "A" shall remain in full force and effect with respect to all work performed during the first year of the of this Agreement unless modified by the parties as set forth hereinbelow. Thereafter, the rates set forth in the Appendix "A" will be adjusted annually to reflect the change in the consumer price index of the immediately preceding twelve (12) month period which rate adjustment shall

be effective on the anniversary date of this Agreement. The parties agree to review the initial rates after the first three (3) months of the Agreement to determine whether or not a flat fee for services would be economically beneficial to each party.

#### **SECTION 7**

#### **TERM OF AGREEMENT**

The term of this Agreement shall commence on January 13, 2015 and continue in effect through the 12 day of January, 2016. Either party, upon thirty (30) days written notice to the other party, may terminate this Agreement.

#### **SECTION 8**

#### **WALTON COUNTY'S RIGHT TO AUDIT RECORDS**

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

#### **SECTION 9**

#### **INDEPENDENT CONTRACTOR RELATIONSHIP**

The parties declare that the relationship between CSI and WALTON COUNTY under this Agreement is that of an independent contractor. No agent or employee of CSI shall be considered an agent or employee of WALTON COUNTY. WALTON COUNTY 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 CSI.

#### **SECTION 10**

#### **SEVERABILITY**



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

**SECTION 11**  
**CONTROLLING LAW**

This Agreement shall be governed by and interpreted in accordance with the laws of the State of Florida.

**SECTION 12**  
**CONFIDENTIAL AND**  
**PROPRIETARY INFORMATION**

All information provided by either party to the other pursuant to this Agreement is confidential and proprietary to the providing party, and such information shall not be disclosed to any third party except with the written consent of the providing party or as may be required by law. 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 Agreement is highly confidential and proprietary to CSI. Any unauthorized disclosure or use of the information in violation of this provision will be conclusively deemed a material breach of this Agreement. This provision shall survive termination of this Agreement.

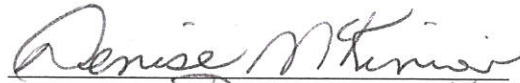
**SECTION 13**  
**BINDING AFFECT**


This Agreement shall be binding on the parties hereto, their successors and assigns.

EXECUTED IN DEFUNIAK SPRINGS, FLORIDA ON THE DATE AND

YEAR FIRST ABOVE WRITTEN.

WITNESSES:

  
Print Name: Denise McKinion

  
Print Name: Franklin S. Seay

CHELCO SERVICES, INC.,

a Florida corporation

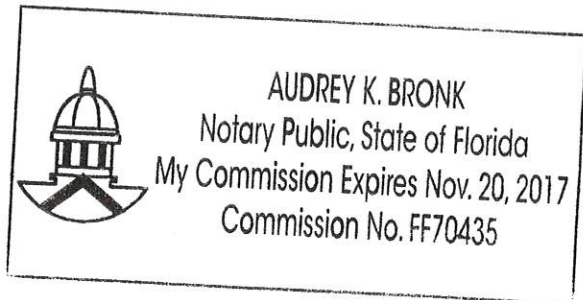
By:   
Dennis M. Morris, Chief Operating Officer

WALTON COUNTY, FLORIDA

By:   
Bill Imfeld Chairman  
Board of County Commissioners

ATTEST:





APPENDIX A

**Walton County Public Works**

LOCATING PRICE SCHEDULE

Locate Rate: \$12.00 per ticket (6 units per ticket)

\*Additional Locate: \$12.00 per unit

Design Locate Rate: \$ 33.47 per hour

Clear Rate: \$6.00 per ticket

Hourly Rate for Jobsite Observation (M-F 7:00 a.m. – 5:00 p.m.): \$33.47

OT Hourly Rate for Jobsite Observation (after 5:00 p.m. and on weekends or holidays): \$50.21

Callout Rate After Normal Working Hours or for Emergencies (2hr Response Time): \$100.00

\*Additional locate every 1000 feet