

**LAKE COUNTY AGREEMENT #26005 FOR A UTILITY BILLING SOFTWARE
SYSTEM FOR PUBLIC WORKS**

This Agreement, is entered into by and between the Purchasing Agent for Lake County, and Advanced Utility Systems Corporation (Contractor).

RECITALS

WHEREAS, Lake County is seeking an Utility Billing Software system; and

WHEREAS, the Contractor has the ability to provide services as defined in the Agreement Documents; and

WHEREAS, the Central Services Department of Lake County issued Request for Proposal Number 26005 in connection with this procurement; and

WHEREAS, the Purchasing Agent and the selection committee have determined that the Proposals submitted by the Contractor on February 9, 2006, is the most advantageous proposal received, and best serves the interests of Lake County, and:

WHEREAS, the Lake County Board has passed a resolution at its regular meeting on May 9, 2006, authorizing the Purchasing Agent to execute this Agreement;

**NOW THEREFORE, Lake County and the Contractor AGREE AS
FOLLOWS:**

SECTION 1. AGREEMENT DOCUMENTS

The Agreement Documents which constitute the entire agreement between Lake County and the Contractor are:

- A. This Agreement and all exhibits thereto including Attachment A., Statement of Work
- B. Request for Proposals (RFP) Number 26005 dated, January 2006
- C. The Contractor Response to Request for Proposals Number 26005 dated, February 9, 2006

In the event of conflict between the RFP as modified herein and the Response to Request for Proposals Number 26005, the provisions of the RFP shall control.

SECTION 2. SCOPE OF WORK

The Contractor agrees to provide Utility Billing Software services in accordance with the Agreement Documents.

SECTION 3. DURATION

This Agreement shall be effective through the implementation dates as set out in the Statement of Work after which time it may be renewed, extended or modified in writing signed by both parties.

SECTION 4. INDEMNIFICATION

The Contractor agrees to indemnify, save harmless and defend Lake County, its agents, servants, and employees, and each of them against and hold it and them harmless from any and all lawsuits, claims, demands, liabilities, losses and expenses, including court costs and attorney's fees, for or on account of any injury to any person, or any death at any time resulting from such injury, or any damage to property, which may arise or which may be alleged to have arisen out of or in connection with the work covered by this Agreement. The foregoing indemnity shall apply except if such injury, death or damage is caused directly by the willful and wanton conduct of the Lake County, its agents, servants, or employees or any other person indemnified hereunder.

SECTION 5. INSURANCE

The Contractor must obtain, for the Contract term and any extension of it, insurance issued by company or companies qualified to do business in the State of Illinois and provide the County with evidence of insurance. Insurance in the following types and amounts is necessary:

X Comprehensive General (Public) Liability in a broad form, to include coverage for the following where exposure exists:

Premises/Operations, Independent Contractors,
Products/Completed Operations, Personal Injury and
Contractual Liability, limits of liability not less than:
Personal Injury: \$ 300,000.00 each person
1,000,000.00 each occurrence

SECTION 6. AGREEMENT PRICE

Lake County will pay to the Contractor the fixed sum of \$335,000 as follows: Payments shall be made as follows: 20% upon contract signing, 20% upon completion of planning, process examination and pre-install visit; 40% upon installation of software; 10% upon completion of system training and ; 10% upon the use of the system as the main utility billing system at Lake County based on acceptance parameters in Section 18. After the work has been furnished to and accepted by the County, the vendor shall submit the invoices for payment within thirty (30) days, in accordance with the Local Government Prompt Payment Act. Charges specified herein do not include taxes. Lake County is not subject to Federal Excise Tax, and, per Illinois Compiled Statutes, 35 ILCS 120/2-5, Lake County is exempt from state and local taxes. The County shall reimburse the Contractor for all applicable taxes.

SECTION 7. JURISDICTION, VENUE, CHOICE OF LAW:

This contract shall be governed by and construed according to the laws of the State of Illinois. Jurisdiction and venue shall be exclusively found in the 19th Judicial Circuit Court, State of Illinois.

SECTION 8. TERMINATION

Lake County reserves the right to terminate this Agreement, or any part, with thirty (30) days written notice. Upon termination of the Agreement, each party shall return to the other party all papers, materials and properties of the other party held for purposes of executing the Agreement. In the event of termination of the Agreement by Lake County, all implementation services rendered up to and including the day of termination are due and payable to Contractor including any costs associated with the Contractor properly affecting the termination. The Contractor may terminate this Agreement if Lake County is in default of the Agreement.

SECTION 9. INDEPENDENT CONTRACTOR

The Contractor is an independent contractor and no employee or agent of the Contractor shall be deemed for any reason to be an employee or agent of Lake County.

SECTION 10. WARRANTS

The Contractor represents and warrants to Lake County that none of the materials will in any way infringe upon the property rights of others. The Contractor shall defend all suits or claims for infringement of any patent, copyright or trademark rights and shall hold the County harmless from loss on account thereof.

SECTION 11. ASSIGNMENT

Neither the Contractor nor Lake County shall assign any duties of performance under this Agreement without the express prior written consent of the other, which may not be unreasonably withheld.

SECTION 12. MODIFICATION

This Agreement may be amended or supplemented only by an instrument in writing executed by the party against whom enforcement is sought.

SECTION 13. DISPUTE RESOLUTION

All issues, claims, or disputes arising out of this Agreement shall be resolved in accordance with the Appeals and Remedies Provisions in Article 8 of the Lake County Central Services Ordinance.

SECTION 14. NO IMPLIED WAIVERS

The failure of either party at any time to require performance by the other party of any provision of this Agreement shall not affect in any way the full right to require such performance at any time thereafter. Nor shall the waiver by either party of a breach of any provision of this Agreement be taken or held to be a waiver of the provision itself.

SECTION 15. SEVERABILITY

If any part of this Agreement shall be held to be invalid for any reason, the remainder of this Agreement shall be valid to the fullest extent permitted by law.

SECTION 16. DOCUMENTATION

The Application Software documentation (referred to as 'Documentation') shall include, but not be limited to the following components: narrative description of the system, narrative description of the applications, data base record descriptions, screen layouts with descriptions of each input field on the screens, report layouts with descriptions of each data element on the report and operator instructions.

SECTION 17. APPLICATION SOFTWARE INSTALLATION

On the mutually agreed upon installation date, the Contractor shall install the Application Software upon the Network and in all other ways make the Application Software ready for Lake County's intended use ("Installation"). Installation shall include but not be limited to the following: (1) the introduction of object code for the Application Software onto the internal storage of the Equipment;

(ii) the verification of the Application Software's readiness through the execution of a demonstration routine designed and performed by the Contractor with Lake County personnel attending; (iii) the generation of master files, initialized, and able to accept Lake County's data; (iv) the creation of an icon(s) or menu(s) to give personnel with valid log-on security access to programs; (v) the establishment of default values required by programs; (vi) installation of the runtime(s) necessary to enable networked microcomputers to access and operate the Application Software; (vii) installation of the programs or commands necessary to enable any printed output from the Application Software to print on any Network printer that has been defined in a network printer selection menu; (viii) the delivery of all Documentation related to the use and operation of the Application Software installed.

SECTION 18. APPLICATION SOFTWARE ACCEPTANCE TESTING

1 Upon completion of the Installation of the Application Software, Lake County will test the Application Software upon the Network to determine whether the Application Software, used in conjunction with the Network, operates in accordance with the Acceptance Tests set forth in "Acceptance Tests" below. All such Acceptance Testing will be conducted by Lake County personnel at Lake County's site.

2 The following testing criteria will be used by Lake County in testing the Application Software ("Acceptance Tests"):

- (a) The Application Software meets the current published product specifications and documentation;
- (b) The Application Software is capable of running a variety of data on a repetitive basis without failure;
- (c) All Documentation has been delivered and reasonably accurately reflects the operation of the Application Software.
- (d) The Application Software is Year 2000 compliant.

Lake County shall perform Acceptance Testing of the Application Software upon completion of installation and training, or sooner, at Lake County's discretion. Acceptance Testing shall include system testing and user testing. If, in Testing, discrepancies exist or errors are encountered, the Application Software will be considered to have failed the Acceptance Tests. The Contractor shall proceed to make corrections and resubmit the Application Software for Acceptance Testing. If Lake County determines the system has failed to meet the Contractor's current published product specifications or does not function properly, Lake County may have the Contractor

modify the installed Application Software to eliminate the deficiencies and extend the Acceptance Testing period to remedy the problems.

.3 Lake County will either (i) notify the Contractor in writing that the Application Software meets the Acceptance Tests and is accepted by Lake County, or (ii) notify the Contractor in writing that the Application Software fails to meet the Acceptance Tests.

If Lake County fails to notify the Contractor that the Application Software fails to meet the Acceptance Tests within forty-five (45) days from the date of the Contractor notification to Lake County to begin Acceptance testing, the Application Software will be deemed accepted.

If Lake County notifies the Contractor that the Application Software does not meet any or all of the Acceptance Tests, Lake County will set forth a list of the errors or omissions that have caused the Application Software not to meet the Acceptance Tests.

After notification of a failure of the Application Software to meet the Acceptance Tests, the Contractor shall have thirty (30) business days from the date that the Contractor receives the list of errors and omissions to modify or improve the Application Software to meet **the Acceptance Tests**. The modified Application Software will then be retested in the same manner as **described above in Section 18.2**.

.4 The Contractor shall be responsible to make improvements to the system to achieve the optimum performance of both the software and hardware.

SECTION 19. APPLICATION SOFTWARE WARRANTIES

.1 The Contractor warrants that for a period of one (1) year from the date of Acceptance the Application Software used in conjunction with the Network shall operate in accordance with the terms set forth in this Agreement, ("Warranty of Operation"). Any errors or non-conformance to the Agreement within the warranty period shall be corrected by the Contractor at no charge to Lake County. Lake County shall be entitled to unlimited telephone support and shall receive all new versions, releases and updates to the Application Software during the warranty period as set out in the Software Maintenance Agreement between the parties attached hereto.

.2 The Contractor covenants and represents that the Application Software and all related materials supplied to Lake County hereunder do not infringe or otherwise constitute wrongful use of any copyright, patent, registered industrial design, trade mark, trade secret or any other right of any third party. The Contractor shall indemnify and save harmless Lake County from any suit or proceeding (including without limitation any judgment awarded there under, any reasonable settlement agreed to, any costs incurred in complying with such judgment or settlement and any or all costs, including reasonable legal costs of any attorney incurred in respect of the same) brought against Lake County by reason of any such infringement or any wrongful use save where the same has arisen through Lake County's unauthorized modifications to the Application Software.

Lake County will notify the Contractor in writing of any such suit or proceeding promptly after Lake County is served with process in respect of such suit or proceeding. Failing such notification, but without limitation to the Contractor's obligation to indemnify as aforesaid, the Contractor may either defend or settle such claim on Lake County's behalf, upon approval of the State's Attorney.

The Contractor shall have no liability for any claim of copyright or patent infringement based on (1) use of other than a current unaltered release of the Application Software or Documentation available from the Contractor if such infringement would have been avoided by the use of a current unaltered release of the Application Software or Documentation available from the Contractor or (2) use or combination of the Application Software or Documentation with programs or data other than the Contractor's if such infringement would have been avoided by the use or combination of the Application Software or Documentation with other programs or data.

If the Contractor is required to replace the Application Software or related materials as defined in this section, the Contractor shall be responsible for the cost to replace the Application Software up to the cost of the Contractor Application Software License fees.

.3 Warranty of Compatibility with Network. The Contractor understands that Lake County intends to use the Application Software in conjunction with the Network defined herein; accordingly, the Contractor represents and warrants that the Application Software shall be fully compatible with the Network. The Contractor further warrants that all updates, revisions, releases and new versions of the Application Software are and shall be fully compatible with the latest version of the operating system in use by the County.

SECTION 20. MODIFICATIONS AND ADDITIONAL SERVICES

Any programming modifications or other consulting services requested by Lake County shall be provided by the Contractor on a time and materials basis. The Contractor's billing rates for time and materials assistance for programming services is \$120 per hour and (\$) \$120 per hour for consulting services. Said billing rates shall remain at those rates until one year from the Acceptance of this Agreement at which time the Contractor will provide time and materials assistance at the rate charged to other the Contractor customers for similar services.

Prior to commencement of services, the Contractor shall define in writing the labor hours, billing rate, description of services and/or work to be performed, the changes or additions to the Application Software, the way in which the Application Software will function upon completion of the modifications, and the estimated time period for the services to be performed. Lake County shall not be charged for any services until the additional services are approved by Lake County personnel in writing. Only after the Contractor receives approval in writing from Lake County will the Contractor perform the additional services.

SECTION 21. PROJECT STATUS MEETINGS

Personnel from the Contractor and Lake County will meet as needed to discuss the progress made by the Contractor and Lake County in the performance of their respective obligations hereunder since the last such meeting.

After the first meeting, the Contractor and Lake County will notify each other in writing of any problems or circumstances encountered since the last such meeting, which might prevent the Contractor or Lake County from meeting any obligations hereunder. Each shall bear its own costs for such meetings.

SECTION 22. OUT-OF-POCKET EXPENSES

All travel and related out-of-pocket expenses paid by the Contractor during the installation and training portions of system implementation will be reimbursed by Lake

County. The estimate for these expenses is \$30,000. Such expenses will be paid to the Contractor by Lake County as incurred by the Contractor. The Contractor will be obligated to inform Lake County if the estimated expenses will be exceeded in a reasonable timeframe.

SECTION 23. LICENSE

The Contractor hereby grants Lake County a perpetual, nontransferable, nonexclusive licenses under the terms of this Agreement to use the Application Software on the Network. Lake County shall have the absolute right to upgrade or replace any equipment in the Network and continue to use the Application Software on the Network. Lake County shall not be required to pay the Contractor any additional licensing fee or other fees as a result of using the Application Software in conjunction with the upgraded or replacement equipment on the Network. If the Contractor is required to provide any services to assist with the upgrade or replacement of the equipment, the Contractor may charge Lake County for such service on a time and materials basis.

Lake County may not give away, rent, lease or otherwise sell, sublicense, distribute or transfer the License granted under this Agreement without the prior written consent of Consultant.

Lake County acknowledges that the software under license contains proprietary and confidential information of the Consultant which shall, at all times, remain the property of the Consultant. Through the grant of licenses pursuant to this Agreement, Lake County is only entitled to use of the software in accordance with the terms of this Agreement.

Lake County agrees that it will not attempt to derive, or permit or help others to derive the source code relating to the software or attempt to otherwise convert or alter the software into human readable code. Lake County further agrees that it will not attempt to duplicate, or permit or help others to duplicate, the source code relating to the software.

SECTION 24. DEFAULT

.1 BY Lake County. The nonpayment or nonperformance of any obligation of Lake County shall not be deemed a default unless Lake County fails to cure the default within thirty (30) days after written notice to Lake County of such nonpayment or nonperformance. If Lake County fails to cure such default, then the Contractor may discontinue any and all licenses for the Application Software or terminate this Agreement and pursue any remedy available to it by law in addition to any specific rights or remedies set forth in this Agreement.

.2 BY the Contractor. The nonperformance of any obligation by the Contractor shall not be deemed a default unless the Contractor fails to cure the default within forty five (45) days after written notice to the Contractor of such nonperformance; provided, however, the Contractor's time to cure a default under Acceptance Testing shall be the time set forth in that section.

If the Contractor fails to cure such default, ceases conducting business in the normal course, becomes insolvent, makes a general assignment for the benefit of creditors, suffers or permits the appointment of a receiver for its business or assets, or avails itself of or becomes subject to any proceeding under the Federal Bankruptcy Act or any other statute of any state relating to insolvency or the protection of the rights of creditors, then Lake County at its sole option may do any one or more of the following: (i) terminate this

Agreement; (ii) suspend any payments due under the Agreement; (iii) pursue any remedy available to it by law in addition to any specific rights or remedies set forth in this Agreement; (iv) continue to use the Application Software and Documentation for as long as Lake County deems necessary for the sole purpose of operating Lake County's business needs.

SECTION 25. PROTECTION AND SECURITY

Lake County agrees not to provide or otherwise make available any Application Software or Documentation, including but not limited to flow charts and logic diagrams, in any form, to any person other than Lake County or the Contractor employees without prior written consent from the Contractor, except during the period any such person is on Lake County's premises with the Lake County's permission for purposes specifically related to the customers use of the licensed program or optional materials.

SECTION 26. DELIVERY COSTS

The Contractor shall be responsible for the cost of producing and delivering the Application Software and Documentation to Lake County's facility in the agreed upon medium.

SECTION 27. RISK OF LOSS

If any Application Software or Documentation is lost or damaged during shipment, the Contractor shall replace the Application Software or Documentation and storage media at no additional charge to Lake County.

SECTION 28. DISCONTINUANCE

Within two (2) months after the date of discontinuance of any license under this Agreement, Lake County will furnish the Contractor with a registered letter certifying that through its best effort, and to the best of its knowledge, the original and all copies, in whole or in part, in any form, including partial copies in modifications, of the Application Software and any Documentation received from the Contractor or made in connection with such license have been destroyed or returned.

SECTION 29. STANDARD INFORMATION SECURITY

Contractor agrees that while in the process of performing services to Lake County, it may come in contact with information deemed important and proprietary to Lake County. Contractor agrees that any services performed for Lake County, whether on Lake County premises or not, will meet or exceed Lake County's information security policy and privacy standards. Lake County reserves the right to audit bidder's performance in meeting these standards.

Third Party Network Access

Contractor agrees to sign the Lake County Third Party Network Access Request form before a logon to Lake County's enterprise network is provided.

SECTION 30. LIMITATION OF LIABILITY

The foregoing warranty is in lieu of all other warranties express or implied, including, but not limited to, the implied warranties of merchant ability and fitness for a particular purpose.

Lake County agrees that the Contractor's liability to Lake County hereunder for damages regardless of the form of action, shall not exceed the charges paid by Lake County for the

Application Software, except as defined HEREIN. Lake County further agrees that the Contractor will not be liable for any lost profits, or for any claim or demand against Lake County by any other party, except a claim for patent or copyright infringement as provided herein.

No action, regardless of form, arising out of the transactions under this Agreement, may be brought by either party more than one (1) year after the cause of action has occurred. In no event will the Contractor be liable to Lake County for consequential damages even if the Contractor has been advised of the possibility of such damages.

IN WITNESS HEREOF, the undersigned have caused this Agreement to be executed in their respective names on the dates hereinafter enumerated.

Lake County:

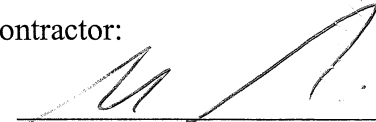


GARY L. REIS
Assistant Director of Central Services
Purchasing Agent

Date

8.11.06

The Contractor:



STEVEN HAMMOND
Vice-President
Advanced Utility Systems Corp.

Date

August 10, 2006