

SOLE SOURCE/PROPRIETARY SOURCE

- 24. Approve Sole Source Procurement and Award M-473-04/PWM for FSP-3000 Maintenance to ADVA Optical Networking, Inc. of Mahwah, NJ. (Estimated \$95,000.00 per year).**

M-473-04/PWM will provide for expertise and technical skills on an as needed basis to maintain the County's FSP-3000 system. ADVA Optical Networking, Inc (ADVA) is the original equipment manufacturer of the FSP-3000 system and is the sole provider of maintenance.

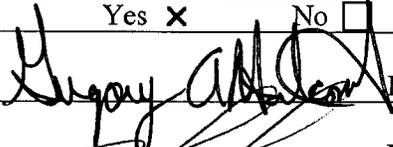
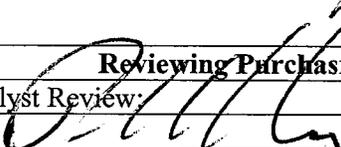
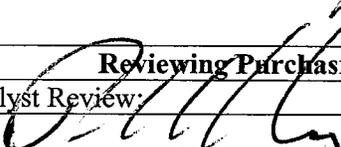
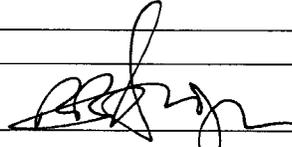
The FSP-3000 system was purchased and installed by Siemens Information and Communications Networks, Inc. (Siemens) under RFP-4171-02/BJC in 2002 and provides for the integration and optical connectivity of existing networks, switches, and Video broadcast equipment at various locations throughout the County. ADVA performed maintenance as a subcontractor (pass-through) under the Siemens contract. The FSP-3000 system's warranty and maintenance under the installation RFP has expired and we can now contract direct with ADVA.

This is a budgeted project and funds are available in account number 140200-530460. The Information Technologies Department/Telecommunications Division and Fiscal Services Department/Purchasing and Contracts Division recommend that the Board approve the project and authorize the Chairman to execute the Miscellaneous Agreement as prepared by the County Attorney's Office.

**SOLE SOURCE / PROPRIETARY SOURCE
PURCHASE DATA SHEET
PURCHASING AND CONTRACTS DIVISION**

SOLE SOURCE

PROPRIETARY SOURCE

Date Submitted: 11/22/04	Requestor: Gregory A. Holcomb
Requisition No.:	Dept./Div.: Information Technologies/ Telecomm
Item Description: FSP 3000 Maintenance Agreement	
Your Selected Vendor's Name: ADVA Optical Networking, Inc.	
Vendor's address: 1 International Blvd. Suite 610 Mahwah, NY 07495	
Vendor's Phone & Fax No.: (201) 258-8287 Fax (201) 684-9200	
Vendor's Contact Person: Abdul Kasim Vice President, Business Development	
Justification, state why this is the only item which will fulfill your needs:	
Previously provided by Siemens under original Purchase. Siemens has since indicated they no longer are able to provide (see attached email). ADVA is the manufacturer and direct maintenance source. ADVA Scope of Services/Standard Contract is attached.	
Comment and/or verify if there are other sources of supply that meet this need:	
Vendor #1 Contact: Siemens - Philip Gordon	Phone # (561)923-1463
Vendor #2 Contact:	Phone #
Vendor #3 Contact:	Phone #
Attachments:	Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>
Requesting Division Head Signature: 	Date: 11/22/04
Requesting Department Head Signature: 	Date: 11/22/04
Reviewing Purchasing and Contracts Staff	
Buyer/Contracts Analyst Review: 	Date:
Supervisor Review: 	Date: 9 Dec 2004
Purchasing Manager - Determination	
Comments:	
Approval/Disapproval of:	
Purchasing Manager Signature: 	Date: 12/14/04
PO/Contract No.: M-473-04/PWA	Amount: \$ #95K/yr

PURCHASING AND CONTRACTS DIVISION
03/11/04



Greg,

Since Siemens is not providing direct maintenance support for the ADVA solutions, we will not be able to enter into a new maintenance only contract with Seminole County. As you know the first year maintenance which was part of our solution response to the original bid, was essentially a pass- thru with direct coverage from ADVA. Internal procedures at Siemens calls for us to now refer you to contract directly with ADVA for the subsequent years coverage.

Based on the above please feel free to contact and contract directly with ADVA for your required coverage. I have also copied ADVA on this email so as to also make them aware of our position regarding this matter.

Sorry for the inconvenience that this has caused. Let me know if you have any questions.

Thanks

Philip Gordon

Secure Networks Representative

Siemens Enterprise Networks

A division of Siemens Communications ,Inc.

900 Broken Sound Parkway NW, Boca Raton FL 33487

Office: (561)923-1463

Mobile: (954)913-3248 Fax: (877)537-5615

WebSite: www.siemensenterprise.com

E-Mail: I have a new E-mail address effective immediately:

philip.gordon@siemens.com

-----Original Message-----

From: GHolcomb@seminolecountyfl.gov [mailto:GHolcomb@seminolecountyfl.gov]

Sent: Wednesday, November 17, 2004 3:36 PM

To: Ken Pratt

Cc: Abdul Kasim; Gordon, Philip

Subject: RE: FSP 3000 Maintenance

How do I get someone to provide me something in writing indicating that ADVA is now the sole maintenance provider? An email will work. This is what I had previously received that I forwarded to our Purchasing Dept.

Greg:

Once ADVA has sold its equipment to a customer through a channel (such as

Siemens), it is our policy to serve that customer via the channel only.
In effect then, all subsequent activities (maintenance and/or purchases)with respect to ADVA equipment should be conducted via Siemens.

As I mentioned in an earlier email, it is also fiscally beneficial for Seminole County to purchase ADVA equipment & maintenance from Siemens, due to the significantly better discount terms that a large channel like Siemens commands.

Please do not hesitate to contact me should you have any questions.

Best Wishes,

Abdul Kasim
Vice President, Business Development
ADVA Optical Networking
201.258.8287

--****Florida has a very broad Public Records Law. Virtually all written communications to or from State and Local Officials and employees are public records available to the public and media upon request. Seminole County policy does not differentiate between personal and business emails. E-mail sent on the County system will be considered public and will only be withheld from disclosure if deemed confidential pursuant to State Law.****

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FSP-3000 SOFTWARE AND HARDWARE MAINTENANCE AGREEMENT (M-473-04/PWM)

THIS AGREEMENT is made and entered into this _____ day of _____, 20____, by and between **ADVA OPTICAL NETWORKING, INC.**, a corporation authorized to do business in Florida, having its principal place of business at One International Boulevard, Suite 610, Mahwah, New Jersey 07495, hereinafter called "ADVA" and **SEMINOLE COUNTY**, a political subdivision of the State of Florida, whose address is Seminole County Services Building, 1101 East First Street, Sanford, Florida 32771, hereinafter called the "COUNTY".

W I T N E S S E T H:

WHEREAS, the COUNTY desires to retain the services of a competent and qualified contractor to provide FSP-3000 Software and Hardware maintenance in Seminole County; and

WHEREAS, ADVA is competent and qualified to furnish FSP-3000 Software and Hardware maintenance to the COUNTY and desires to provide its professional services according to the terms and conditions stated herein,

NOW, THEREFORE, in consideration of the mutual understandings and covenants set forth herein, COUNTY and ADVA agree as follows:

SECTION 1. SERVICES. COUNTY does hereby retain ADVA to furnish professional services and perform those tasks as further described in the Scope of Services attached hereto and incorporated herein as Exhibit "A".

SECTION 2. COMMENCEMENT AND TERM. The services to be rendered by ADVA shall commence upon execution of this Agreement by the parties and shall continue for a term of two (2) years from that date. This Agreement shall be automatically renewed for additional one (1) year terms unless either party gives ninety (90) days written notice prior to the annual termination date of its intention not to renew.

SECTION 3. DEFINITIONS. The following definitions are applicable to the entire Agreement.

(a) "Additional Services" shall mean any maintenance services provided hereunder which do not directly relate to remedial or preventive maintenance and which are provided at no additional charge to COUNTY.

(b) "Agreement" shall mean this Maintenance Agreement, all service specific terms and conditions and all amendments, Exhibits, and Schedules (as defined herein) executed by the parties.

(c) "Billable Services" shall mean any maintenance services provided hereunder which are neither included in the maintenance coverage charges nor mentioned as Additional Services that are available to COUNTY at additional costs.

(d) "Charge" shall mean the cost for maintenance services of a specific product for a specified term.

(e) "Hardware" shall mean the equipment set forth in the applicable Schedule of coverage.

(f) "Normal Business Hours" shall mean 8:00 a.m. to 5:00 p.m., Eastern Time, Monday through Friday, excluding Federal holidays, as well as New Year's Day, Memorial Day, Independence Day (July 4), Labor Day, Thanksgiving Day, and Christmas Day.

(g) "Repair Service" shall mean the remedial problem resolution maintenance services performed by ADVA at one of its plants.

(h) "Response Time" shall mean (as applicable) the average period of time elapsed from ADVA's awareness of a problem it takes the ADVA personnel to arrive at the Site (as defined herein); or with respect to remote maintenance services, it takes COUNTY to have the possibility to talk to ADVA remotely. When COUNTY schedules any maintenance service at a later time, Response Time provisions shall

not be applicable to such scheduled maintenance services.

(i) "RMA number" shall mean the Return Material Authorization number provided to COUNTY by ADVA in connection with the return of any defective Hardware by COUNTY to ADVA.

(j) "Schedule" shall mean the specific delineation of a particular coverage in the format defined by Exhibit "A".

(k) "On-Site Service" shall mean maintenance services that are in contrast to Repair Services provided at the Site set forth in the applicable Schedule (as defined herein) consisting of repair or replacement, at ADVA's option, of any defective Hardware and the correction of any failure of the Software to perform in accordance with the Software specifications, provided COUNTY's use of the Hardware or Software is materially affected by such failure.

(l) "Site" shall mean the location set forth in the applicable Schedule.

(m) "Software" shall mean computer programs contained on a magnetic tape, disc, semiconductor device, or other memory device or system memory consisting of: (1) hardwired logic instructions which manipulate data in the central processor and control input/output operations and error, diagnostic and recovery routines; and (2) instruction sequences in machine readable code that control processing, peripheral equipment, administration and maintenance functions, as well as documentation used to describe, maintain, and use the computer programs set forth in the applicable Schedule (as defined herein).

(n) "Spare Parts" shall mean repair parts, new and/or refurbished that are consigned, sold, or otherwise provided by ADVA and used for repair of Hardware. In providing On-Site Service or Repair Service hereunder, Spare Parts utilized by ADVA for Hardware

become the property of COUNTY, and the replaced Hardware components the property of ADVA.

(o) "Subsidiary" means any corporation, company, or other entity:

(1) more than fifty percent (50%) of whose outstanding shares or securities (representing the right to vote for the election of directors or other managing authority); or

(2) which does not have outstanding shares or securities, as may be the case in a partnership, joint venture, or unincorporated associate, but more than fifty percent (50%) of whose ownership interest (representing the right to make the decisions for such corporation, company, or other entity) are now or hereafter owned or controlled, directly or indirectly, by either ADVA or COUNTY, provided, however, that COUNTY or other entity shall be deemed to be a Subsidiary only so long as such ownership or control exists.

(p) "Term" shall mean the period of coverage specified in a Schedule for the Software or Hardware covered thereunder.

SECTION 4. ADDITIONS OF HARDWARE OR SOFTWARE.

(a) Hardware or Software may be added for maintenance services provided hereunder, if: (1) it is covered immediately upon expiration of the applicable product warranty; (2) it is currently covered under another existing service agreement with ADVA and is transferred to this Agreement; or (3) it is inspected by ADVA, for a charge billable to COUNTY, and that any remedial necessary actions to correct deficiencies found by such inspection are performed by ADVA at COUNTY expense in order to return the covered products to a current maintainability level and problem free condition.

(b) ADVA shall inform COUNTY of all such inspection and repair charges prior to performing such work and shall not proceed without

written authorization from COUNTY to do so.

(c) COUNTY requests for the additional Hardware and/or Software covered by this Agreement shall be in writing. ADVA will accept COUNTY request for addition if: (1) the Hardware and/or Software qualifies for coverage according to the first paragraph of this Section; and if (2) either (A) ADVA already provides maintenance services at the Site; or (B) ADVA already has service coverage established in the area where the Hardware and/or Software is located and this location is within a country ADVA already provides maintenance services under this Agreement.

(d) ADVA will provide maintenance services for such Hardware and/or Software at least within: (1) sixty (60) days for locations where ADVA already provides maintenance services under this Agreement; or (2) ninety (90) days for all other locations, after ADVA has accepted COUNTY's request for the addition of Hardware and/or Software, and has received a signed amendment to the relevant Schedule.

(e) In case of additions of Hardware and/or Software, the cost to add coverage for the additional products will be prorated to be coterminous with the then existing Term on such Schedule. COUNTY agrees that is responsible for such additional charges.

SECTION 5. DELETIONS OF HARDWARE OR SOFTWARE.

(a) COUNTY agrees to provide ninety (90) days prior written notice to ADVA of COUNTY's intent to delete from this Agreement any of the Hardware and/or Software covered and identify all Hardware and/or Software intended for deletion.

(b) Should COUNTY delete covered Hardware and/or Software from this Agreement or remove it from operation at a given Site COUNTY shall receive a prorated credit based on the Charge applicable to the

Hardware and/or Software being deleted and the remainder of the Term on such Schedule, not to exceed ten percent (10%) of the total Charge under this Agreement. Hardware and/or Software transferred from one location to another are not eligible for such credit. If applicable, COUNTY shall notify ADVA in writing of the serial numbers of those products so decommissioned prior to the issuance of any credit by ADVA.

SECTION 6. CONDITIONS OF SERVICE.

(a) ADVA's obligation to perform On-Site Service or Repair Services is conditioned upon the Hardware and/or Software malfunction having occurred in the course of normal operation. Any other cause shall be considered a Billable Service.

(b) ADVA's obligation to perform On-Site Service or Repair Service is conditioned upon ADVA's right to have access to and to inspect the Hardware and/or Software at the Site, provided ADVA notifies COUNTY seven (7) days prior to the inspection.

(c) COUNTY agrees to co-operate with ADVA, execute its obligations as described in this Agreement, provide all reasonable assistance, and respond to all reasonable requests from ADVA to allow ADVA to provide maintenance services.

(d) ADVA may subcontract the performance of maintenance services to qualified subcontractors.

(e) ADVA assumes full responsibility for the actions of such subcontractors, including responsibility for their supervision, direction, and control. COUNTY has the right to require ADVA to remove any personnel and supply replacement personnel within reasonable time and at ADVA's cost if COUNTY notifies ADVA in writing about substantial reasons to consider personnel to be unacceptable to COUNTY.

SECTION 7. FORCE MAJEURE. If ADVA's, or its subcontractor's, performance under this Agreement is interfered with by reason of any circumstances beyond ADVA's, or its subcontractor's, reasonable control, including without limitation, airline schedules, weather, fire, explosion, main power failure, acts of God, war, revolution, civil commotion, acts of public enemies, any law, order, regulation, ordinance, or requirement of any government body or representative of any such legal body, labor unrest, including without limitation, strikes, slowdowns, picketing, or boycotts, then ADVA shall be excused from its performance on a day to day basis to the extent of such interference.

SECTION 8. COMPENSATION.

(a) The COUNTY hereby agrees to compensate ADVA for the complete performance of its obligation to provide FSP-3000 Software and Hardware maintenance and service to COUNTY; for all loss or damage arising out of the nature of the work; from the action of the elements or from any unforeseen or unknown difficulties or obstructions which may arise or be encountered in the prosecution of the work; and for all risks of every description connected with the work for the total price of SEVEN THOUSAND EIGHT HUNDRED EIGHTY-SEVEN AND 25/100 DOLLARS (\$7,887.25) per month, not to exceed NINETY-FOUR THOUSAND SIX HUNDRED FORTY-SEVEN AND NO/100 DOLLARS (\$94,647.00) per year.

(b) On or about the date each payment is due, ADVA will send COUNTY an invoice covering the Service Fees for the next payment period. COUNTY shall pay each invoice within thirty (30) days of the invoice date to ADVA's office designated by ADVA.

SECTION 9. WARRANTY.

(a) ADVA warrants that it will perform maintenance services using reasonable care and skill in accordance with the current

description of the maintenance services contained in this Agreement or any Schedule hereto. ADVA does not warrant that it will correct all defects.

(b) ADVA warrants that Spare Parts are free from defects in workmanship or material under normal use for the longer of: (1) the remainder of the Term; or (2) ninety (90) days after utilization by ADVA.

(c) ADVA warrants that ADVA products do not and will not contain any computer code that: (1) would disable the Hardware, Software, or any network, or impair in any way their operation based on the elapsing of a period of time, the exceeding of an authorized number of copies, or advancement to a particular date or other numeral (sometimes referred to as "time bombs", "time locks", or "drop dead" devices); (2) would permit ADVA or another person to access the Hardware, Software, or any network (sometimes referred to as "traps", "access codes", or "trap door" devices), or contain any other similar harmful, malicious, or hidden procedures, routines, or mechanisms that would cause the Hardware, Software, or any network to cease functioning, or to damage or corrupt data, storage media, programs, equipment, or communications, or otherwise interfere with COUNTY operations; or (c) would permit ADVA or any other person to track, monitor, or otherwise report the operation and use of the Hardware or Software by COUNTY or any of its customers or clients.

(d) ADVA warrants that: (1) ADVA will advise and make all of its subcontractors, agents, or other entities or individuals who perform any of the maintenance services, aware of all of ADVA's obligations contained herein, including without limitation, the security and confidentiality obligations; (2) ADVA will use commercially reasonable efforts to cause all subcontractors to abide by and be bound to all

such obligations and warranties; and (3) ADVA shall remain bound by any and all warranties and obligations of ADVA contained herein or in any Schedule, regardless of whether a subcontractor performs the maintenance services in whole or in part.

(e) ADVA shall not be responsible for its failure to perform any of its obligations (including, for example, to meet service levels) under this Agreement, if such a failure is the result, directly or indirectly, of the inability of the Hardware and/or Software to correctly process, provide, and/or receive data with other hardware and/or software. ADVA assumes no responsibilities or obligations to cause Hardware and/or Software to accurately exchange data with non-ADVA hardware and/or software.

(f) EXCEPT AS EXPRESSLY PROVIDED HEREIN, NEITHER ADVA NOR ANY OF ITS SUBCONTRACTORS MAKE A WARRANTY OF ANY KIND, WRITTEN OR ORAL, STATUTORY, EXPRESS, OR IMPLIED, WITH RESPECT TO ANY SPARE PARTS OR SERVICE PROVIDED IN CONNECTION WITH THIS AGREEMENT, INCLUDING BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, ALL SPARE PARTS AND SERVICE ARE BEING PROVIDED "AS IS".

SECTION 10. EXCLUSIONS. On-Site Service or Repair Service provided by ADVA hereunder for the Charge delineated on each applicable Schedule includes remedial actions required to remedy malfunctions caused in the normal course of operation of the covered products. Other maintenance services requested by COUNTY, including but not limited to the following, are not part of the On-Site Service or Repair Service provided by ADVA hereunder and shall be considered Billable Services:

(a) Electrical work external to the Hardware and associated with any terms not provided by ADVA.

(b) Repair necessary due to mishandling, abuse, fire, explosion, main power failure, or acts of God.

(c) Repair necessary due to improper storage, installation, or maintenance by a party other than ADVA.

(d) Repair necessary due to improper use, including use with electrically or mechanically incompatible equipment or not in accordance with the specifications or correct operating environment.

(e) Relocation, removal, or reinstallation of Hardware and/or Software.

(f) Painting or otherwise refinishing the Hardware.

(g) Provision of consumables (e.g. printer cartridges, paper, disks, etc.).

(h) No trouble found with ADVA provided Hardware and/or Software.

(i) Problems caused by products provided and/or serviced by vendors other than ADVA (including, but not limited to Year 2000 compliance problems.

(j) Waiting time on Site if Hardware and/or Software are not available to ADVA personnel.

SECTION 11. LIMITATION OF LIABILITY.

(a) Each party's entire liability for any claim whatsoever, including but not limited to, actions of contract or tort, but excluding claims based on willful misconduct arising out of or in connection with this Agreement, are set forth in this Section.

(b) IN NO EVENT SHALL EITHER PARTY, ITS PERSONNEL, OR SUBCONTRACTORS, BE LIABLE TO THE OTHER PARTY FOR ANY SPECIAL, INDIRECT, INCIDENTAL, EXEMPLARY, PUNITIVE, OR CONSEQUENTIAL DAMAGES WHATSOEVER ARISING OUT OF OR RELATED TO THIS AGREEMENT, INCLUDING WITHOUT LIMITATION, LOSS OF PROFITS, LOSS OF DATA, OR LIQUIDATED

DAMAGES, EVEN IF THAT PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

(c) EACH PARTY'S TOTAL LIABILITY FOR ACTUAL AND DIRECT DAMAGES, EXCEPT FOR CLAIMS FOR PERSONAL INJURY, SHALL BE LIMITED TO ONE HUNDRED THOUSAND U.S. DOLLARS (\$100,000.00).

SECTION 12. CUSTOMER RECORDS. During the performance of its obligations hereunder, ADVA will use its best efforts to preserve the data provided by COUNTY. ADVA shall not, however, be responsible for the loss or corruption of such data or any portion thereof. COUNTY shall insure that all such files shall be adequately duplicated and documented to fully satisfy COUNTY future needs.

SECTION 13. OWNERSHIP OF INTELLECTUAL PROPERTY AND PUBLIC RECORDS LAW.

(a) Nothing contained in this Agreement or elsewhere will be construed to grant directly, or by implication, estoppel, or otherwise, any ownership right or license under any ADVA patent, copyright, trade secret, or other intellectual property including any intellectual property created as a result of, or related to, the products sold or services performed under this Agreement.

(b) ADVA acknowledges COUNTY's obligations under Chapter 119, Florida Statutes, to release public records to members of the public upon request. ADVA acknowledges that COUNTY is required to comply with Chapter 119, Florida Statutes, in the handling of the materials provided to the COUNTY under this Agreement and that said Statute controls over the terms of this Agreement.

SECTION 14. EXCUSABLE DELAY AND DEFAULT. Neither party shall be liable when delays or defaults arise out of a cause beyond the control and without the fault or negligence of either party. Such causes may include, but are not restricted to, acts of God or the public enemy,

government action or failure to act, fires, floods, earthquakes, epidemics, quarantine restrictions, strikes, freight embargoes, wars, civil disturbances, work stoppage, power failures, laws, regulations, ordinances, acts, or unusually severe weather. The party who has been affected by an excusable delay shall immediately give notice to the other party of such circumstances.

SECTION 15. INTERRUPTION OF SERVICE. COUNTY must notify ADVA, or ADVA's subcontractor, immediately of any Software and/or Hardware failure. ADVA will respond to COUNTY's notification in a manner consistent with the level of service purchased. In the event that ADVA does not repair the Software and/or Hardware within thirty (30) days, ADVA will provide COUNTY with a credit not to exceed thirty (30) days total for the term of the Agreement for ADVA's delay in completing the repair.

SECTION 16. TERMINATION.

(a) This Agreement may be terminated by either party for cause upon thirty (30) days written notice.

(b) In the event that either party declares default for failure to perform under this Agreement, then the defaulting party shall have thirty (30) calendar days to cure the default.

SECTION 17. INSURANCE.

(a) ADVA shall provide, pay for, and maintain in force at all times during the term of this Agreement, such insurance, including Workers' Compensation Insurance, General Liability Insurance, and Property Damage Insurance, as will provide to COUNTY the protection contained in this Section.

(b) Policies other than Workers' Compensation shall be issued only by companies authorized to conduct business in the State of Florida by Certificates of Authority issued to the companies by the

Department of Insurance of the State of Florida and which maintain a Best's Rating of A or better and a Financial Size Category of VII or better according to the A.M. Best Company. Policies for Workers' Compensation may be issued by companies authorized as a group self-insurer by 440.57 Florida Statutes.

(c) ADVA shall specifically protect COUNTY by naming COUNTY as an additional insured on a Certificate of Insurance. Such policies shall contain, at a minimum, the following provisions, coverages and policy limits of liability:

(1) General Liability Insurance. ADVA shall carry limits of not less than FIVE HUNDRED THOUSAND AND NO/100 DOLLARS (\$500,000.00) for injuries, including accidental or wrongful death of any one person, and subject to the same limit for each person in an amount not less than ONE MILLION AND NO/100 DOLLARS (\$1,000,000.00) on account of any one occurrence.

(2) Property Damage Insurance. ADVA shall carry liability limits in an amount not less than FIVE HUNDRED THOUSAND AND NO/100 DOLLARS (\$500,000.00) for property damage on account of any one claim and in an amount not less than ONE MILLION AND NO/100 DOLLARS (\$1,000,000.00) for property damages on account of any one occurrence.

(d) Prior to the commencement of work hereunder, ADVA shall furnish to the COUNTY a certificate of the above-required insurance. ADVA agrees to reissue such certificate as it expires during the period ADVA is obligated to perform under this Agreement.

(e) The maintenance of the insurance coverage set forth herein shall not be construed to limit ADVA's liability under the provision of the indemnification clause.

(f) ADVA agrees to insert the substance of this clause, including subsection (f) in all subcontracts hereunder.

SECTION 18. ALTERNATIVE DISPUTE RESOLUTION (ADR).

(a) In the event of a dispute related to any performance or payment obligation arising under this Agreement, the parties agree to exhaust COUNTY ADR procedures prior to filing suit or otherwise pursuing legal remedies. COUNTY ADR procedures for proper invoice and payment disputes are set forth in Section 55.1, "Prompt Payment Procedures," Seminole County Administrative Code. Contract claims include all controversies, except disputes addressed by the "Prompt Payment Procedures", arising under this Agreement and ADR procedures therefore are set forth in Section 220.102, "Contract Claims", Seminole County Code.

(b) ADVA agrees that it will file no suit or otherwise pursue legal remedies based on facts or evidentiary materials that were not presented for consideration in the COUNTY ADR procedures set forth in subsection (a) above of which ADVA had knowledge and failed to present during the COUNTY ADR procedures.

(c) In the event that COUNTY ADR procedures are exhausted and a suit is filed or legal remedies are otherwise pursued, the parties shall exercise best efforts to resolve disputes through voluntary mediation. Mediator selection and the procedures to be employed in voluntary mediation shall be mutually acceptable to the parties. Costs of voluntary mediation shall be shared equally among the parties participating in the mediation.

SECTION 19. ASSIGNMENTS. This Agreement, or any interest herein, shall not be assigned, transferred, or otherwise encumbered, under any circumstances, by the parties hereto, without prior written consent of the opposite party and only by a document of equal dignity herewith, except that ADVA may, without COUNTY's consent, assign this Agreement to a present or future entity that controls, is controlled

by, or is under common control with ADVA.

SECTION 20. SUBCONTRACTORS. In the event ADVA, during the course of the work under this Agreement, requires the services of any subcontractors or other professional associates in connection with service covered by this Agreement, ADVA must secure the prior written approval of the COUNTY. If subcontractors or other professional associates are required in connection with the services covered by this Agreement, ADVA shall remain fully responsible for the services of subcontractors or other professional associates.

SECTION 21. INDEPENDENT CONTRACTOR. It is agreed that nothing herein contained is intended or should be construed as in any manner creating or establishing a relationship of copartners between the parties, or as constituting ADVA, including its officers, employees, and agents, the agent, representative, or employee of the COUNTY for any purpose, or in any manner, whatsoever. ADVA is to be and shall remain an independent contractor with respect to all services performed under this Agreement.

SECTION 22. EMPLOYEE STATUS. Persons employed by ADVA in the performance of services and functions pursuant to this Agreement shall have no claim to pension, workers' compensation, unemployment compensation, civil service, or other employee rights or privileges granted to the COUNTY's officers and employees either by operation of law or by the COUNTY.

SECTION 23. SERVICES NOT PROVIDED FOR. No claim for services furnished by ADVA not specifically provided for herein shall be honored by the COUNTY.

SECTION 24. ENTIRE AGREEMENT.

(a) This document incorporates and includes all prior negotiations, correspondence, conversations, agreements or

understandings applicable to the matters contained herein and the parties agree that there are no commitments, agreements or understandings concerning the subject matter of this Agreement that are not contained or referred to in this document. Accordingly, it is agreed that no deviation from the terms hereof shall be predicated upon any prior representations or agreements, whether oral or written.

(b) No modification, amendment, or alteration in the terms or conditions contained herein shall be effective unless contained in a written document executed with the same formality and of equal dignity herewith.

SECTION 25. UNAVAILABILITY OF FUNDS. If the COUNTY shall learn that funding cannot be obtained or cannot be continued at a level sufficient to allow for these services specified herein, this Agreement may then be terminated immediately, at the option of the COUNTY, by written notice of termination delivered in person or by mail to ADVA at its address specified hereinafter. The COUNTY shall not be obligated to pay for any services provided by ADVA after ADVA has received notice of termination.

SECTION 26. EQUAL OPPORTUNITY EMPLOYMENT. ADVA agrees that it will not discriminate against any employee or applicant for employment for work under this Agreement because of race, color, religion, sex, age, national origin, or disability and will take steps to ensure that applicants are employed, and employees are treated during employment, without regard to race, color, religion, sex, age, national origin or disability. This provision shall include, but not be limited to, the following: employment, upgrading, demotion or transfer; recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship.

SECTION 27. CONFLICT OF INTEREST.

(a) ADVA agrees that it will not engage in any action that would create a conflict of interest in the performance of its obligations pursuant to this Agreement with the COUNTY or which would violate or cause others to violate the provisions of Part III, Chapter 112, Florida Statutes, relating to ethics in government.

(b) ADVA hereby certifies that no officer, agent or employee of the COUNTY has any material interest (as defined in Section 112.312(15), Florida Statutes, as over 5%) either directly or indirectly, in the business of ADVA to be conducted here, and that no such person shall have any such interest at any time during the term of this Agreement.

(c) Pursuant to Section 216.347, Florida Statutes, ADVA hereby agrees that monies received from the COUNTY pursuant to this Agreement will not be used for the purpose of lobbying the Legislature or any other State or Federal agency.

SECTION 28. SEVERABILITY OF INVALID PROVISION. If any one or more of the covenants or provisions of this Agreement shall be held to be contrary to any express provision of law or contrary to the policy of express law, though not expressly prohibited, or against public policy or shall for any reason whatsoever, be held invalid then such covenants or provisions shall be null and void, shall be deemed separable from the remaining covenants or provisions of this Agreement and shall in no way affect the validity of the remaining covenants or provisions of this Agreement.

SECTION 29. GOVERNING LAW.

(a) This Agreement and the rights and duties of the parties will be governed and interpreted in accordance with the laws of the State of Florida.

(b) In providing all services pursuant to this Agreement, ADVA shall abide by all statutes, ordinances, rules and regulation pertaining to, or regulating the provisions of, such services, including those now in effect and hereafter adopted. Any violation of said statutes, ordinances, rules or regulations shall constitute a material breach of this Agreement, and shall entitle the COUNTY to terminate this Agreement immediately upon delivery of written notice of termination to ADVA.

SECTION 30. NOTICES. Whenever either party desires to give notice unto the other, it must be given by written notice, sent by overnight mail with receipt, addressed to the party for whom it is intended at the place last specified and the place for giving of notice shall remain such until it shall have been changed by written notice in compliance with the provisions of this Section. For the present, the parties designate the following as the respective places for giving of notice, to wit:

For COUNTY:

Information Technologies Department
1101 E. First St.
Sanford, FL 32771

For ADVA:

ADVA Optical Networking, Inc.
One International Blvd. Ste 610
Mahwah, NJ 07495

Either of the parties may change, by written notice, as provided herein, the addresses or persons for receipt of notices.

SECTION 31. WAIVER. Failure or delay on the part of either party to exercise any right or power under this Agreement shall not operate as a waiver of any right or power under this Agreement.

IN WITNESS WHEREOF, the parties hereto have made and executed this instrument for the purpose herein expressed.

ATTEST: ADVA OPTICAL NETWORKING, INC.

_____, Secretary By: _____ President

(CORPORATE SEAL) Date: _____

ATTEST: BOARD OF COUNTY COMMISSIONERS SEMINOLE COUNTY, FLORIDA

MARYANNE MORSE
Clerk to the Board of
County Commissioners of
Seminole County, Florida. By: _____
CARLTON HENLEY, Chairman

Date: _____

For the use and reliance of Seminole County only.

As authorized for execution by the Board of County Commissioners at their _____, 20____ regular meeting.

Approved as to form and legal sufficiency.

County Attorney
AC/lpk
12/21/04
m-473

Attachment:
Exhibit "A" - Scope of Services

PART III-05

SERVICE SPECIFIC TERMS AND CONDITIONS, PS-05

"PLATINUM SERVICE"

ADVA Service Type	Help Desk Available	Technician On-Site Available	Parts Available
PLATINUM	24 x 7 x365	24 x 7 x 365	24 x 7 x 365
		See below 4 hour On-Site Response Time	See below 4 hour On-Site Response Time

1. COVERAGE

The Hardware and Software covered under this PS-05 is subject to On-Site Service as well as Repair Service, as is appropriate. In order to cover Hardware and/or Software under this PS-05 Platinum Service, Customer must, unless otherwise specified in the Agreement, execute the applicable Schedule (in the form of Exhibit 1 to this Agreement) which must specify "PS-05 Coverage (Platinum Service)."

(a) For any Hardware and/or Software covered under this PS-05 Platinum Service, Customer shall receive, at a minimum, the following Services twenty-four (24) hours a day, seven (7) days a week, three hundred sixty-five (365) days a year: (i) ADVA's help desk service; (ii) an on site technician to provide Services at the Site within four (4) hours of Customer's request for such on-site technician; (iii) delivery and installation of Spare Parts as specified in Section 1(b) below; and (iv) ADVA's repair service at the applicable plant of ADVA, as is appropriate.

(b) ADVA shall deliver and install Spare Parts and Software releases necessary to correct all defects for the Hardware and/or Software to Customer twenty-four (24) hours a day, seven (7) days a week, three hundred sixty-five (365) days a year, within four (4) hours of Customer's request for such Spare Parts.

2. SERVICE PROCEDURE

(a) Should Hardware and/or Software covered hereunder malfunction, Customer shall notify ADVA's technical support staff by telephone at the number listed on the applicable Schedule. ADVA technical support staff shall be available by telephone for technical support twenty-four (24) hours a day, seven (7) days a week, three hundred sixty-five (365) days a year. ADVA shall use commercially diligent efforts to resolve the defect over the telephone.

(b) If ADVA is unable to resolve the defect in the manner set forth in Section 2(a) above, Customer may request and ADVA shall provide either or both of the following: (i) an on-site technician to respond to and resolve such defect as set forth in Section 1(a) above; or (ii)

delivery and installation of replacement parts as set forth in Section 1(a) to the extent replacement parts are necessary to resolve such defect.

(c) ADVA shall use commercially diligent efforts to respond to requests for Services in accordance with the following:

SEVERITY LEVEL	TELEPHONE RESPONSE TIME	ON-SITE RESPONSE TIME
All defects	1 hour	4 hours

(d) Notwithstanding the availability of a Work-Around, ADVA will continue to work to fix all defects and, in any event, provide Customer with the applicable permanent correction within five (5) days.

3. REPAIR SERVICE

ADVA will be responsible for providing all Spare Parts and Software releases necessary to correct all malfunctions with the ADVA product as set forth in Section 1(b). ADVA will also be responsible for the repair of each defective component. ADVA shall pay all shipping charges for the return to ADVA and ADVA shall pay shipping charges for the return of the repaired item to the spares depot.

4. RISK OF LOSS OR DAMAGE

Should ADVA remove any Customer owned Hardware and/or Software from the Site for repair, ADVA shall be responsible for any loss or damage to the removed items until they are returned to Customer.

5. MODEM ACCESS

Certain ADVA products provide for the ability to be accessed remotely, by ADVA, for diagnostic support. The use of this capability requires Customer approval and Customer provided phone line and will not be undertaken in the absence of such.

6. ACCESS

Customer will ensure to provide ADVA at no charge with:

- a) an appropriate work environment consistent with applicable national occupational safety & health standards or equivalent local standards;
- b) reasonable access to the Hardware;
- c) working space and facilities including heat, light, ventilation, electric current and outlets; and
- d) local telephone extension (or toll free domestic and international access to ADVA) for the use of personnel in the Hardware area.

Customer is responsible for any telephone company central office ("TELCO C.O.") access authority requirements and Customer's premises environment.

An authorized representative of the Customer must be present when service is provided. The Customer shall be responsible for any Site security authorization(s) for the ADVA personnel to gain access to the Hardware.

If upon ADVA's personnel arrival, the Site does not meet ADVA's service environment requirements as stated above, or an unsafe environment or condition exists, or a nonproductive waiting condition in excess of thirty (30) minutes occurs, ADVA reserves the right to decline support and charge customer for work performed or attempted on that service call.

7. SECURITY AND SAFETY REGULATIONS

ADVA personnel providing On-Site Service shall observe all Site security and safety regulations. Any such regulations, which are not normally observed in similar operating environments, must be communicated to such personnel to insure that no unintentional violations may occur in writing and in advance.

8. ADDITIONAL SUPPORT SERVICES

ADVA shall provide to Customer, at no additional charge, the following:

- a) New, no-charge Software releases. This service does not include releases that incorporate additional features, for which ADVA normally charges its customers, nor the cost of any new hardware required to implement new software functions. It also does not include software licensed by any other vendor, but provided by ADVA.
- b) Installation of any mandatory engineering changes, both in Hardware and software.
- c) One training class for up to six participants. Additional classes can be provided at the current ADVA published price.