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MEMORANDUM

DATE: June 23, 2000

TO: ✓ Tom Willi, Interim Town Administrator  
Mayor Harry Venis  
Councilmembers

FROM: Monroe Kiar *MK*

RE: Control #000606/Holland and Knight, Conflict of Interest

Previously, I was asked to give my opinion on the Town of Davie signing a Waiver of Conflict concerning E.Spire Communications. Attached is another copy of my Memorandum of June 21, 2000.

Since the issuance of my prior Memorandum, I have received a telephone call from Mr. Neil Kalis, the Chairperson of the CRA, as well as Ms. Susan Delegal, the attorney for the CRA. Additionally, I have spoken with Vice Mayor Richard Weiner, and it has been requested by Mr. Kalis and suggested by Vice Mayor Weiner that I place this item on the next agenda to afford the Council the opportunity to receive input from Mr. Kalis and Ms. Delegal, if they so wish, regarding this matter, and to allow the Council to make the final determination regarding the request of Holland and Knight that the Town of Davie sign a Waiver of Conflict. My legal opinion is set forth in my Memorandum of June 21, 2000, but the ultimate policy decision in this case rests with the Town Council.

Accordingly, I would appreciate it if you would add this item to the next Town Council Agenda to permit the Town Council to discuss this item and take whatever action it deems appropriate.

MDK/gmv  
enclosure

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MEMORANDUM

TO: Candice Ordway  
Robert Middaugh, Town Administrator  
Mayor and Councilmembers

FROM: Monroe D. Kiar 

DATE: June 21, 2000

RE: Control No. 2000-0606  
Holland and Knight  
Conflict of Interest

Question: I have been asked to give my opinion on the Town of Davie signing a waiver of conflict concerning e.spire Communications.

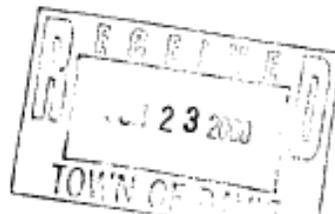
Answer: The Town can sign a waiver of conflict if it desires. It is my legal opinion that as a matter of policy, the Town of Davie **should not** sign waiver of conflicts.

Discussion:

First, this is no reflection upon the law firm of Holland and Knight. Holland and Knight enjoys a reputation as an excellent law firm. In fact, the very fact that it has requested a waiver indicates that firm's adherence to the Rules of Professional Conduct.

There is contained within Rules of Professional Conduct 4-1.7(a) the requirement that a law firm not represent a client if the representation of that client will be directly adverse to the interests of another client, unless the lawyer:

- (1) reasonably believes that the representation will not adversely affect the lawyer's responsibilities to and relationship with the other client. Holland and Knight believes that.



- (2) **the additional requirement is contained in (2)** which is that each client consents after consultation. It is my feeling that the Town of Davie should as a matter of policy not sign such waiver of conflict. There is just too much unforeseen potential for conflict, such as was presented in the situation with the law firm handling the Town of Davie case against the city of Sunrise. I am continually hearing stories as an attorney of problems which develop when a conflict later emerges, which conflict was not reasonably anticipated at the time that the consent was given to waive the conflict.

For the above reasons, it is my recommendation that the Town of Davie have a policy in legal matters of not signing or consenting to any waivers of conflict.

Law Offices

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March 16, 2000

Internet Address:  
sdelega@hklaw.com

Mr. Robert Middaugh  
Town Administrator  
Town of Davie  
6591 Orange Drive  
Davie, FL 33314

Re: American Communication Services of Jacksonville, Inc., d/b/a  
e.spire/Town of Davie Community Redevelopment Agency - Conflict  
of Interest Waiver

Dear Mr. Middaugh:

Holland and Knight LLP has been pleased to represent the Town of Davie CRA as special counsel. We are also counsel to e.spire Communications, Inc. ("e.spire"), a local exchange telecommunications company holding certificates from the Florida Public Service Commission.

e.spire has asked Holland & Knight LLP to assist it in obtaining approval from the Town of Davie for access to the Town's right-of-way for placement of e.spire's conduit and fiber optic cable. We would like to request a waiver under Rule 4-1.7 of the Rules Regulating The Florida Bar to allow us to undertake the representation of e.spire. Concurrent representation will not violate the above-referenced rule inasmuch as there is no connection between the firm's assisting e.spire before the Town as described herein, and also acting as counsel to the Town's CRA.

The rules of ethics permit lawyers to represent clients with adverse, or potentially adverse interests in circumstances where the representation of one client will not adversely affect the representation of another client, and on the condition that both clients have provided consent after disclosure of the circumstances. I confirm to you that, under the circumstances of this matter, H&K's representation of e.spire will not adversely affect our representation of the Town, and vice-versa.

Mr. Robert Middaugh  
March 16, 2000  
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The Town agrees to waive any conflict of interest by signing this letter in the space provided below and returning a signed copy to me. Please review and, if acceptable, please sign and return the executed letter to me. Please call me with any questions you may have.

Very truly yours,

HOLLAND & KNIGHT LLP

By:   
SUSAN F. DELEGAL

**CONFLICT WAIVER**

TOWN OF DAVIE, hereby consents and waives any conflict of interest as described in the aforesaid circumstances.

TOWN OF DAVIE

By: \_\_\_\_\_

Its: \_\_\_\_\_

(who has authority to waive this conflict of interest on behalf of the TOWN OF DAVIE)

Date: \_\_\_\_\_