



Town Council Agenda Report

SUBJECT: Resolution

TITLE OF AGENDA ITEM:

A RESOLUTION OF THE TOWN OF DAVIE AUTHORIZING THE MAYOR TO EXECUTE A TEMPORARY RIGHT-OF-WAY USE AGREEMENT BETWEEN THE TOWN OF DAVIE AND FPL FIBRENET, LLC.; AND PROVIDING FOR AN EFFECTIVE DATE.

REPORT IN BRIEF:

This agreement grants permission for FPL FibreNet, LLC to utilize a portion of the Town's public rights of way. FPL FibreNet LLC installs fibre optic cable as a wholesale service. They sell the capacity of their cable to other companies such as Sprint or MCI as the actual user of the cable. They are looking to install cable along University Drive and State Road 84 both of which are FDOT rights-of-way.

This is an interim agreement to use the right-of-way. The agreement was negotiated with Town Attorney, Monroe Kiar in light of the regulations which are going to be in place per the Communication Services Tax Simplification Law adopted in the the 2000 Regular Session of the Florida Legislature. The agreement is consistent with the agreement recently adopted for MediaOne of Greater Florida, Inc. The terms include an application and permit fee of \$2500.00. The terms include requiring a construction bond, provision of insurance naming the Town of Davie as an additional insured and indicates the agreement is temporary. It would need to be replaced upon adoption of a permanent Right-Of-Way Ordinance by the Town of Davie.

DISCUSSION:

The Communication Services Tax Simplification Law adopted by the Florida Legislature in the 2000 Regular Session contains provisions for requiring right-of-way regulations for telecommunications by January 1, 2001. These new regulations are going to be very restrictive in terms of a maximum permit fee of \$100.00 or most likely no fee for permits to use the right-of-way (If a fee is charged then the taxes received by a municipality will be significantly reduced). The agreement enables FPL FibreNet LLC to connect their system prior to new right-of-way regulations being reviewed and enacted by the Town. The application fee negotiated by Town Attorney Kiar is a plus. The Florida League of Cities and the State of Florida are going to provide a model ordinance to municipalities for the right-of-way regulations, hopefully in the near future.

CONCURRENCES: Not Applicable

FISCAL IMPACT: The Town will receive an application fee of \$2500.00.

RESOLUTION _____

A RESOLUTION OF THE TOWN OF DAVIE, FLORIDA, AUTHORIZING THE MAYOR TO EXECUTE A TEMPORARY RIGHT -OF-WAY AGREEMENT BETWEEN THE TOWN OF DAVIE AND FPL FIBERNET, LLC.; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, Chapter 95-403, Florida Laws, authorizes competition in the local exchange telecommunications business, effective January 1, 1996, and provides for alternative local exchange telecommunications companies to be certified by the Florida Public Service Commission; and

WHEREAS, FPL FiberNet LLC has been certified by the Florida Public Service Commission as an alternative local exchange telecommunications company and desires to utilize a portion of the Town’s public rights-of-way; and

WHEREAS, the Town has the right and authority to manage the public rights-of-way of the Town, and to establish reasonable requirements for the use of the public rights-of-way of the Town; and

WHEREAS, FPL FibreNet LLC has requested approval for the use of right-of-way from the Town; and

WHEREAS, the Town and FPL FiberNet LLC have negotiated this Agreement which is mutually agreeable to both parties.

NOW, THEREFORE, BE IT RESOLVED BY THE TOWN COUNCIL OF THE TOWN OF DAVIE, FLORIDA.

SECTION 1. That the recitals set forth above are true and correct and are made a part of this resolution.

SECTION 2. The Town Council of the Town of Davie hereby approves the aforementioned agreement and authorizes the Mayor to execute the Temporary Right-Of-Way Use Agreement , a copy of which is attached as Exhibit “A”.

SECTION 3. This resolution shall take effect immediately upon its passage and adoption.

PASSED AND ADOPTED THIS _____ DAY OF _____, 2000.

MAYOR/COUNCILMEMBER

ATTEST:

TOWN CLERK

APPROVED THIS _____ DAY OF _____, 2000.

TEMPORARY RIGHTS-OF-WAY USE AGREEMENT

THIS TEMPORARY RIGHTS-OF-WAY USE AGREEMENT ("Use Agreement") is made as of the _____ day of _____, 2000, by and between the Town of Davie (the "Town"), and FPL FiberNet, LLC ("Company"), a company authorized to do business within the State of Florida and having its principal office at 9250 W. Flagler Street, Miami, FL 33174.

RECITALS

WHEREAS, Chapter 95-403, Florida Laws, authorizes competition in the local exchange telecommunications business, effective January 1, 1996, and provides for alternative local exchange telecommunications companies to be certified by the Florida Public Service Commission; and

WHEREAS, the Company is a limited liability company duly organized and existing under the laws of the State of Delaware, authorized to conduct business in the State of Florida and is certified by the Florida Public Service Commission to provide telecommunications services; and

WHEREAS, the Company desires to construct, install and maintain Telecommunications Facilities within the Public Rights-of-Way of the Town;

NOW, THEREFORE, in consideration of the recitals and the mutual promises contained herein, the Town and Company agree as follows:

SECTION 1. Definition

1. Town is the Town of Davie Florida.
2. Company is FPL FiberNet, LLC.
3. Person is any person, firm, partnership, association, corporation, company or organization of any kind, except the Town.

4. Public Rights-of-Way means the surface and the areas across, in, over, along, upon and below the surface of the public streets, roads, lanes, courts, boulevards, alleys, highways, waterways, bridges, sidewalks, driveways, curbs or other public places under ownership or control of the Town, including, without limitation, all public utility easements and public service easements, as they now exist or may be hereafter constructed, opened, laid out or extended within the present limits of the Town or in such territory as may be consolidated or annexed to the Town.
5. Telecommunications System or System shall mean the Company's system which is used in the Town for the provision of telecommunication services which the Company is authorized to provide by state or federal law.
6. Telecommunication Services shall mean any services that the Company is authorized to provide by state or federal law.

SECTION 2. Scope of Use. Subject to the provisions of this Use Agreement and all federal, state and local laws, the Town hereby grants to the Company the non-exclusive right to construct, install, maintain, locate, move, place, reconstruct, reinstall, relocate, remove, replace its Telecommunications System within the Public Rights-of-Way for the purpose of providing Telecommunications Services in accordance with plans approved by the Town Engineer. In the event that Company, in the future, should seek to expand its facilities to use additional Rights-of-Way, the Company shall be required to seek an amendment to this Agreement..

SECTION 3. Term and Effective Date. Except as otherwise provided in Chapter 337, Florida Statutes, and other applicable state and federal laws, this Temporary Agreement and the license granted hereunder shall commence upon approval of this Temporary Agreement by

Ordinance by the Town Council and then on the date of execution of same by Town and shall continue for a term of five (5) years, unless terminated earlier as provided herein. This Temporary Agreement may be terminated upon adoption of a permanent Right-of-Way Ordinance by the Town and the execution of a new Use Agreement or Permit in conformance with said Ordinance.

SECTION 4. Not Exclusive Use. The Company's use of the Public Rights-of-Way shall be non-exclusive and shall not affect the right of the Town to grant to itself or any other person the right to use the Public Rights-of-Way for the construction, reconstruction, maintenance and operation of telecommunications facilities or for any purpose whatsoever, so long as such grant does not adversely or discriminatorily affect the Company's right to use the Public Rights-of-Way.

SECTION 5. Manner of Construction. The construction, installation, maintenance and removal of the Company's Telecommunications System shall be accomplished without cost or expense to the Town and in such a manner so as not to endanger persons or property, or unreasonably interfere with the traveling public or other users of the Public Rights-of-Way.

SECTION 6. Condition of System The Company agrees to keep its Telecommunications System in good and safe condition and free from any nuisance.

SECTION 7. Filing of Permit, Plans and Specifications. The Company shall file a permit application along with the plans and specifications as outlined in Section 2 above, with the Town's Department of Public Works or other proper department prior to construction and installation of its Telecommunications System and shall receive permit approval prior to commencement of any construction or installation of its Telecommunications System in the Town's Rights-of-Way, which approval shall not be unreasonably withheld or delayed. All construction or installation by Company of its Telecommunications System in the Town's Rights-of-Way shall be in accordance with the

plans approved by the Town Engineer. Further, there shall be no trimming or removal of any trees from the Rights-of-Way or other public property by the Company without the prior written approval of the Town.

SECTION 8. Inspection, Placement of Facilities, Safety.

1. The Town shall have the right to inspect, upon reasonable notice to Company at reasonable times and in a reasonable manner, the installation, construction, and maintenance of the Telecommunications System of the Company in the Public Rights-of-Way to ensure conformance with the terms of this Use Agreement.

SECTION 9. Restoration of Public Rights-of-Way. Following the construction, relocation or removal of its Telecommunications System, Company shall, at its own cost, repair and return the Public Rights-of-Way to the same or similar condition existing before such construction, relocation or removal. The Company shall be responsible for damage to Town street pavements, existing utilities, curbs, gutters and sidewalks due to the Company's installation, maintenance, repair or removal of its Telecommunications System, and shall repair, replace and restore in kind, the said damaged property at its sole expense.

SECTION 10. Relocation for Road Purposes. The Company, at its own cost and expense, shall relocate, in cooperation with the Town, its Telecommunications System or any part thereof installed, used and maintained under this Use Agreement if and when the Town finds that such System or any part is unreasonably interfering with the convenient, safe, or continuous use, or the maintenance, improvement, extension, or expansion, of such Public Rights-of-Way, except as may otherwise be provided by law.

SECTION 11. Emergency Removal of Network. If at any time, due to an emergency

situation in the Town, it shall become necessary in the reasonable judgment of the Town to move any part of the Company's Telecommunications System, the Town shall immediately notify the Company at the emergency notification number provided to the Town for such purpose and the Company respond with all possible dispatch to alleviate or remedy the situation.

SECTION 12. Removal or Abandonment. Upon termination of the Use agreement and, at the request of the Town, the Company shall remove its Telecommunications System from the Public Rights-of-Way and shall restore any affected property to the same or similar condition as it existed prior to the installation of the Telecommunications System, or, with the Town's permission, abandon some or all of the System in place.

SECTION 13. As-Built Drawings. The Company shall furnish the Town with as-built drawings of any new construction of its Telecommunications System within sixty (60) days of completion of such construction.

SECTION 14. Insurance. The Company shall maintain throughout the term of this Use Agreement in full force and effect and at its sole cost and expense, workmen's compensation insurance and liability insurance with regard to all damages in the minimum amounts of:

1. General Liability - public liability, including premises, products and complete operations.
 - (1) Bodily injury liability \$ 500,000 each person
\$2,000,000 each occurrence
 - (2) Property damage liability, or \$2,000,000 each occurrence
 - (3) Bodily injury and property damage combined \$2,000,000 single limit
2. Comprehensive - Automobile Liability Insurance, including owned, non-owned and

hired vehicles.

- | | | |
|-----|--|---|
| (1) | Bodily injury liability | \$ 500,000 each person \$2,000,000 each occurrence |
| (2) | Property damage liability, or | \$2,000,000 each occurrence |
| (3) | In lieu of (1) and (2), Bodily injury and property damage combined | \$2,000,000 single limit |

3. The Company and the Town agree that the Company may self-insure its obligations under this Use Agreement. In the event the Company does self-insure, it shall not be required to comply with the requirement for the naming of additional insureds under Section 14.D. of this Agreement. If the Company elects to self-insure, the Company shall provide to the reasonable satisfaction of the Town Administration, evidence demonstrating its financial ability to self-insure the insurance coverage and limit requirements required under this section.

D. All Certificates of Insurance shall name the Town of Davie as an additional insured.

E. Cancellation of Policies of Insurance. At least thirty (30) days prior written notice shall be given to the Town by the Insurer of any intention not to renew such policy or to cancel, replace or materially alter same, such notice to be given by registered mail to the Town. In the event the required insurance is canceled, or for any reason terminated and is not replaced with a new or renewed insurance policy which covers the contractual period, the Town shall suspend this Agreement until such time as a new or renewed Certificate is received by the town.

SECTION 15. Hold Harmless and Indemnification. The Town shall not be liable or responsible for any accident or damage that may occur in the installation, operation, maintenance,

removal or replacement by the Company of its Telecommunications System hereunder and the acceptance of this Use Agreement shall be deemed an agreement on the part of the Company to indemnify the Town and hold it harmless against any and all claims, liability, loss, cost, damage or expense, of any type or nature whatsoever, including reasonable attorneys' fees and court costs, which may arise from the granting of the Company's Use Agreement and the Company's activities associated with the installation, operation, maintenance, removal or replacement of the Company's Telecommunications System hereunder; provided that no such obligation shall extend to claims resulting from the negligence or willful acts or omissions of the Town, its employees, or agents.

SECTION 16. Town Compensation.

1. In consideration of this Use Agreement, the Company shall pay to the Town an annual Use Agreement fee of five hundred dollars (\$500.00) per linear mile of the Company's System which makes physical use of the Public Rights-of-Way; provided, however, that the fee imposed hereunder shall not apply in any manner to the Company if it commences to provide such telecommunication services as defined in Section 203.012(3) (Florida Statutes), in which case the Company shall pay to the Town a Use Agreement fee calculated as stated in Section 337.401(3) (Florida Statutes).

2. The Company shall calculate the amount of the annual Use Agreement fee payment on the date the Use Agreement is adopted, and subsequently on each anniversary of that date thereafter, based on the total mileage of the Company's System installed in the Public Rights-of-Way on that date. Payments by the Company shall be made within thirty-five (35) days thereafter, and shall be accompanied by an explanation

of the calculation of the payment amount. Payments received after the 36th day shall be subject to interest charges of 12% per annum or the highest amount then permitted by law, whichever is lower.

3. Application and Permit Fee. The Company shall pay to the Town of Davie prior to the execution of this Agreement by the Town, a non-refundable fee of \$2,500.00 which shall defray the town's costs related to the application by the Company for this approval and the permit fees associated with the Town's review and approval of the Right-of-Way installation. In accordance with §337,401, Florida Statutes, this fee shall be accredited against any payments that become otherwise due to the town pursuant to Section 16.A. of this Agreement.

SECTION 17.

- A. Construction Requirements. The Company shall construct, install, operate and maintain the Telecommunications System in a manner consistent with all federal, state and local laws, ordinances, construction standards, FCC technical standards and rules and regulations, and all other applicable governmental requirements, including, but not limited to, the standards of the Occupational Safety and Health Administration and the National Electrical Safety Code.
- B. Construction Bond Required. Prior to performing any work in the public Rights-of-Way, the Company shall establish in the Town's favor a construction bond in an amount adequate to insure the Company's faithful performance of the construction, upgrade, rebuild or other work. The construction bond shall be in an amount equal to the contractor's certified estimate for the construction, or such other estimate of

costs as is reasonably acceptable to the Town Engineer and shall be in form which is substantially similar to the public construction bond as set forth in §255.05, Florida Statutes. In the event the Company fails to complete the work in a safe, timely and competent manner in accordance with the provisions of the permit, within seven (7) days of Town's notice to the Company of such failure or as required by applicable law, there shall be recoverable, jointly and severally, from the principal and surety of the bond, any damages or loss suffered by the Town as a result, including the full amount of any compensation, indemnification or costs of removal or abandonment of any property of the Company, or the cost of completing the work, plus a reasonable allowance for attorneys' fees, up to the full amount of the bond.

SECTION 18. Breach and Cure.

- A. In Events of Default. The Company shall be in default if, during the term of this Agreement, the Company fails to perform or observe any term, covenant, agreement or condition of this Agreement, on the part of the Company, within thirty (30) days after prompt written notice thereof from the Town, unless such performance shall reasonably require a longer period, in which case the Company shall not be deemed to be in default if the Company commences the required performance promptly and thereafter pursues and diligently completes such action.
- B. Notice and Cure. Neither party shall be in default under this Agreement or in breach of any provision hereof unless and until the other party shall have given such party written notice of such default and the defaulting party shall have failed to cure the default within thirty (30) days after receipt of such notice; provided, however, that

where such default cannot reasonably be cured within such thirty (30) day period, if the defaulting party shall proceed promptly to cure the same and prosecute such cure with due diligence, the time for curing such default shall be extended for such period of time as may be reasonably necessary under the circumstances, to complete such cure.

SECTION 19. Grounds for Termination. If the Company fails to cure or proceed with due diligence to cure a breach within the period provided pursuant to Section 17, the Town may terminate the Use Agreement.

SECTION 20. Assignment or Transfer.

1. The Company shall not sell, transfer or assign this Use Agreement except to (a) parent or affiliate, (b) any company which Company controls, is controlled by, or is under common control with; or (c) any partnership in which it has a majority interest, or (d) to any entity which succeeds to all or substantially all of its assets whether by merger, sale or otherwise, without the prior consent of the Town, which consent shall not be unreasonably withheld or delayed. However, any such assignee shall provide notice to the Town within sixty (60) days after the assignment and shall provide the Town with proof of its compliance with the provisions of Section 14 of this Agreement and evidence that the assignee is certified by the Public Service Commission and authorized to do business in the State of Florida.

SECTION 21. Notice. All notices required or permitted to be given under this Agreement shall be in writing and sent to the addresses below.

To the Town:

Town Administrator
Town of Davie
6591 Orange Drive
Davie, Florida 33314

To the Company:

FPL FiberNet, L.L.C.
9250 West Flagler Street
Miami, FL 33174
Attn: Sol L. Stamm, Controller

All notices shall be hand-delivered to the addressee, sent by Federal Express or similar overnight delivery service, or sent by U.S. Mail, certified and return receipt requested. The names and addresses in this section may be changed by either party at anytime by giving written notice to the other party.

SECTION 22. Change of Government. Any change of the form of government of the Town as authorized by the constitution and laws of the State of Florida shall not affect the validity of this Use Agreement. Any successor government to the Town shall succeed to all rights and obligations of the Town provided in this Use Agreement.

SECTION 23. Reservation of Rights. Both the Town and the Company reserve and may seek any and all remedies available at law and equity. Neither the Town nor the Company shall be deemed to have waived any rights or remedies at law or equity by virtue of executing this Agreement including actions as to the validity and enforceability of certain terms and conditions of this Agreement.

SECTION 24. Entire Agreement. This Agreement represents the entire understanding and agreement between the parties hereto with respect to the subject matter hereof, and supersedes all prior oral negotiations between the parties. Except as provided in Section 19(C),

this Agreement may be amended, supplemented, modified, or changed only by adoption of an ordinance by the Town and the execution of an instrument agreeing to said amendment, supplementation, modification, or change in the terms hereof by the Company.

SECTION 25. Severability. If any section, subsection, sentence, clause, phrase, or portion of this Agreement is for any reason held invalid or unconstitutional, such portion shall be deemed a separate, distinct, and independent portion of such holding shall not affect the validity of the remaining portions of this Agreement.

SECTION 26. Headings. The heading contained in this Agreement are for reference purposes and shall not affect in any way the meaning and interpretation of this Agreement.

SECTION 27. Successors. This Agreement shall inure to the benefits of, and shall be binding upon the parties hereto and their respective successors and assigns.

SECTION 28. Governing Law; Venue.

This Agreement shall be construed pursuant to the laws of the State of Florida. Any litigation regarding this Agreement shall commence in the Circuit Court of the 17th Judicial Circuit of Florida or in the United States District Court for the Southern District of Florida. In the event that either party should be in default under this Agreement and shall have failed to cure the default within the time periods set forth in this Agreement, the non-defaulting party may institute a legal action to enforce its rights under the terms of this Agreement and shall be entitled to recover any and all attorneys' fees and court costs which it may incur, whether on a trial court level or in any appellate proceedings.

IN WITNESS WHEREOF, the parties have duly executed this Agreement as of the date

first above written.

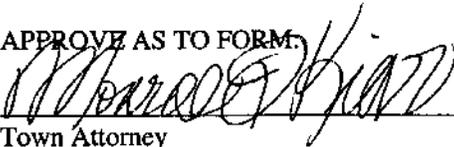
TOWN OF DAVIE

ATTEST:

By: _____
Mayor

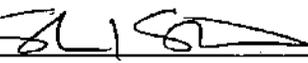
Clerk

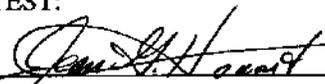
Date: _____

APPROVE AS TO FORM:

Town Attorney

FPL FIBERNET, LLC.

ATTEST:

By: 
Controller


Secretary

Date: 8/21/00

Date: 8/25/00

MONROE D. KIAR
TOWN ATTORNEY
TOWN OF DAVIE
6191 SW 45th Street, Suite 6151A
Davie, Florida 33314
(954) 584-9770

MEMORANDUM

DATE: September 8, 2000

TO: Thomas Willi, Town Administrator

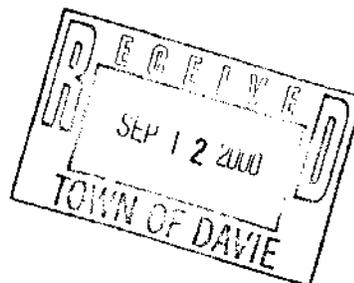
CC: Mayor Harry Venis and Councilmembers
Will Allen, Programs Administrator

FROM: Monroe Kiar 

RE: Control #000702: FPL FiberNet L.L.C. Rights-of-Way Use Agreement

Attached please find three original Temporary Rights-of-Way Agreements between FPL Fibernet, L.L.C. and the Town of Davie which have been executed by FPL FiberNet. For your convenience, I have attached another copy of my prior letter of July 25, 2000 to Mr. Daniel E. Taylor, Esquire of Tripp Scott. As you can see, they have incorporated within the revised Temporary Rights-of-Way Use Agreement all of the changes which I had requested to be made in my letter of July 25, 2000. Accordingly, I have executed same approving the Agreement as to form and it is my recommendation that this matter be placed on the next Town Council Agenda, if possible, for review and approval by the Town Council.

MDK/gmv
enclosures



TOWN ATTORNEY'S OFFICE
TOWN OF DAVIE, FLORIDA
6191 SW 45th Avenue
Suite 6151A
Davie, Florida 33314
(954) 584-9770

Monroe D. Kiar
Town Attorney

July 25, 2000

Daniel E. Taylor, Esquire
Tripp Scott
110 SE Sixth Street
Post Office Box 14245
Fort Lauderdale, Florida 33302

Re: FPL FiberNet LLC Right of Way Agreement

Dear Mr. Taylor:

I have reviewed the Temporary Rights-of-Way Use Agreement prepared by your office and sent to the Honorable Harry Venis on May 22, 2000. I received a copy of the Agreement on July 10, 2000, and have reviewed same. As my secretary advised you, I was out of town last week on vacation. The Agreement looks to be fundamentally in order, but I request that the following changes be made:

1. Please change the first WHEREAS clause under the general heading of "Recitals" to read as follows:

"WHEREAS, Chapter 95-403, Florida Laws, authorizes competition in the local exchange telecommunications business, effective January 1, 1996, and provides for alternative local exchange telecommunications companies to be certified by the Florida Public Service Commission; and..."

2. Please amend Section 2 entitled "Scope of Use" to read as follows:

"Subject to the provisions of this Use Agreement and all state and local laws, the Town hereby grants to the Company the non-exclusive right to construct, install, maintain, locate, move, place, reconstruct, reinstall, relocate, remove, replace its Telecommunications System within the public right-of-way for the purpose of providing telecommunications services in accordance with plans approved by the Town Engineer. In the event that Company, in the future, should seek to expand its facilities to use additional Rights-of-Way, the Company shall be required to seek an amendment to this Agreement."

Daniel E. Taylor, Esquire
July 25, 2000
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3. Please amend Section 7 entitled "Filing of Permit, Plans and Specifications" to read:

"The Company shall file a permit application along with the plans and specifications as outlined in Section 2 above, with the Town's Department of Public Works or other proper department prior to construction and installation of its Telecommunications System and shall receive permit approval prior to commencement of any construction or installation of its Telecommunications System in the Town's Rights-of-Way, which approval shall not be unreasonably withheld or delayed. All construction or installation by Company of its Telecommunications System in the Town's Rights-of-Way shall be in accordance with the plans approved by the Town Engineer. Further, there shall be no trimming or removal of any trees from the Rights-of-Way or other public property by the Company without the prior written approval of the Town."

4. As to Section 14 entitled "Insurance", please change the limits in all categories to provide for minimum limits of \$2,000,000.00 as the combined single limit for each occurrence of bodily injury, personal injury and property damage. Also, will you please have Section 14 reworded as follows:

"The Company shall maintain throughout the term of this Use Agreement in full force and effect and at its sole cost and expense, workmen's compensation insurance and liability insurance with regard to all damages in the minimum amount of:..."

5. As to paragraph C of Section 14, please amend this to read as follows:

"The Company and the Town agree that the Company may self-insure its obligation under this Use Agreement. In the event the Company does self-insure, it shall not be required to comply with the requirement for the naming of additional insureds under Section 14. D. of this Agreement. If the Company elects to self-insure, the Company shall provide to the reasonable satisfaction of the Town Administration, evidence demonstrating its financial ability to self-insure the insurance coverage and limit requirements required under this section."

6. Please add the following as Section 14.D.:

"All Certificates of Insurance shall name the Town of Davie as an additional insured."

7. Please add the following as Section 14.E.:

Cancellation of Policies of Insurance. At least thirty (30) days prior written notice shall be given to the Town by the Insurer of any intention not to renew such policy or to cancel, replace or materially alter same, such notice to be given by registered mail to the

Daniel E. Taylor, Esquire
July 25, 2000
Page four

reasonably acceptable to the Town Engineer and shall be in form which is substantially similar to the public construction bond as set forth in §255.05, Florida Statutes. In the event the Company fails to complete the work in a safe, timely and competent manner in accordance with the provisions of the permit, within seven (7) days of Town's notice to the Company of such failure or as required by applicable law, there shall be recoverable, jointly and severally, from the principal and surety of the bond, any damages or loss suffered by the Town as a result, including the full amount of any compensation, indemnification or costs of removal or abandonment of any property of the Company, or the cost of completing the work, plus a reasonable allowance for attorneys' fees, up to the full amount of the bond."

11. Please reword Section 17 entitled "Breach and Cure" to read as follows:

"A. In Events of Default. The Company shall be in default if, during the term of this Agreement, the Company fails to perform or observe any term, covenant, agreement or condition of this Agreement, on the part of the Company, within thirty (30) days after prompt written notice thereof from the Town, unless such performance shall reasonably require a longer period, in which case the Company shall not be deemed to be in default if the Company commences the required performance promptly and thereafter pursues and diligently completes such action."

B. Notice and Cure. Neither party shall be in default under this Agreement or in breach of any provision hereof unless and until the other party shall have given such party written notice of such default and the defaulting party shall have failed to cure the default within thirty (30) days after receipt of such notice; provided, however, that where such default cannot reasonably be cured within such thirty (30) day period, if the defaulting party shall proceed promptly to cure the same and prosecute such cure with due diligence, the time for curing such default shall be extended for such period of time as may be reasonably necessary under the circumstances, to complete such cure."

12. As to Section 19 entitled "Assignment or Transfer", please remove from paragraph A. the words "or (e) in connection with financing in the ordinary course of business". Also please add to the end of paragraph A of Section 19 the following additional wording:

"However, any such assignee shall provide notice to the Town within sixty (60) days after the assignment and shall provide the Town with proof of its compliance with the provisions of Section 14 of this Agreement and evidence that the assignee is certified by the Public Service Commission and authorized to do business in the State of Florida."

13. With regard to Section 20, will you please change the title referenced therein from "Town Manager" to "Town Administrator".

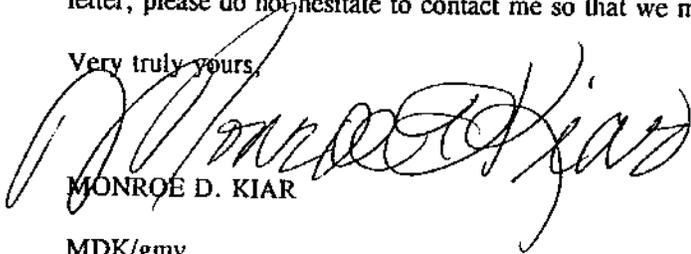
Daniel E. Taylor, Esquire
July 25, 2000
Page five

14. Finally, will you please add a provision to the Agreement as follows:

"Governing Law; Venue. This Agreement shall be construed pursuant to the laws of the State of Florida. Any litigation regarding this Agreement shall commence in the Circuit Court of the 17th Judicial Circuit of Florida or in the United States District Court for the Southern District of Florida. In the event that either party should be in default under this Agreement and shall have failed to cure the default within the time periods set forth in this Agreement, the non-defaulting party may institute a legal action to enforce its rights under the terms of this Agreement and shall be entitled to recover any and all attorneys' fees and court costs which it may incur, whether on a trial court level or in any appellate proceedings."

After you have had an opportunity to review the proposed changes, will you please incorporate them in the Temporary Rights-of-Way Use Agreement which your office previously prepared and sent to me for my review. Should you have any questions regarding the contents of this letter, please do not hesitate to contact me so that we may discuss your concerns.

Very truly yours,



MONROE D. KIAR

MDK/gmv

cc: Thomas Willi, Interim Town Administrator
Will Allen, Programs Administrator