



## The Office of *Susan Starkey* Davie Town Council

### MEMORANDUM

**DATE:** July 26, 2006

**TO:** Mayor and Town Council  
Ken Cohen, Acting Town Administrator  
Bill Underwood, Finance Director  
Mark Kutney, Development Services Director

**FROM:** Susan Starkey, Councilwoman 

**SUBJECT:** Rewrite and Amend the Town of Davie Code regarding the use of the Town's rights of way ("ROW") relating to cable services.

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Attached for the Mayor and Town Council's discussion and consideration is an engagement letter to retain Mr. Gary Resnick at the firm of Gray Robinson, P.A. Pursuant to changes in Florida law, the Town can no longer require agreements with all users of the ROWs, and must therefore have general code requirements setting forth requirements for permits, registration, appropriate payments to the Town, construction conditions, repair of damage, indemnification, bonds, insurance, and enforcement mechanisms including suspending or withholding permits and fines. Mr. Resnick has provided this service for a number of cities in Broward County and this will be a revenue generator for the town. This of course would be subject to the providers within the town's ROW and could be better addressed by the Budget and Finance Department for estimates.

I have previously met with the Town Attorneys office Martin Kiar and Gary Resnick to discuss this matter. In addition, Mr. Resnick's expertise in this area of Telecommunications and services he has provided other Municipalities regarding this matter is the reason to consider this engagement.

Mr. Resnick's resume is attached as well as his engagement letter and Memorandum from Town Attorney's office Monroe Kiar for your consideration. Mr. Resnick will be available to discuss this matter with the town council at the Aug. 2, 2006 meeting.

Should the Mayor and Town Council wish to pursue this matter a resolution would be needed.



"Gary Resnick"  
<gresnick@gray-robinson.com>

07/25/2006 04:29 PM

To <Susan\_Starkey@davie-fl.gov>

cc <Monroe\_Kiar@davie-fl.gov>

bcc

Subject Information for Town Council Meeting

Susan

Per our discussion, attached please find our Engagement Letter and my Bio detailing my background and experience. In addition, I have attached a short Memo explaining specifically what we would be doing for the Town under this engagement.

As I indicated, Monro Kiar and I spoke at length about this and I forwarded these materials to him previously.

I understand that you plan on bringing this up for discussion on Aug. 2, and I will plan on attending the Town Council meeting. If you have any questions, please do not hesitate to contact me. Thanks.

Gary

Gary Resnick, Esq.  
GrayRobinson, P.A.  
401 E. Las Olas Blvd.  
Suite 1850  
Ft. Lauderdale, FL 33301  
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Engagement Letter.pdf



Memo Re\_Davie Engagement.DOC



Bio from Website.DOC

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

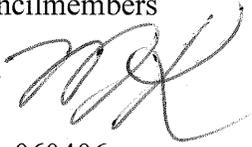
RCVD JUL 25 '06

**MEMORANDUM**

DATE: July 25, 2006

TO: Councilmember Susan Starkey

CC: Ken Cohen, Acting Town Administrator  
Mayor and Councilmembers

FROM: Monroe D. Kiar 

RE: Control Number 060406  
Review Material Sent by BellSouth Regarding Form 394

Attached please find a copy of an email sent by Mr. Resnick which outlines the services that he will perform if the Town Council votes to retain his services. Further, our office has reviewed his proposed Engagement Letter and although it appears in proper form, there are some recommendations that the Council should consider before entering into the Agreement. First, it is respectfully suggested that the Town may wish to obtain from Mr. Resnick an estimate as to what his total fees will be. Further, despite the opening paragraph of Mr. Resnick's Engagement Letter, obviously, no determination to retain Mr. Resnick's services at Gray Robinson, P.A. in connection with the various communications, cable, broadband or other related matters has been reached. This of course, is a determination to be made by the Town Council only.

It should also be noted that paragraph 6 on page 2 talks about representation of other clients and because of the relatively large size of Mr. Resnick's firm and their representation of many other clients, it is possible that there may arise in the future a dispute between another client and the Town. Paragraph 6 further states that the acceptance by Gray Robinson of the current representation of the Town will preclude them from accepting future representation adverse to the Town that involve matters substantially related to the work it performs in the course of its engagement with the Town. It further states that in the event a conflict arises during their representation of the Town, that the Town Attorney shall have the authority to consent to such representation on behalf of the Town after consultation. It is suggested that this last sentence be modified to reflect that in the event of a conflict arising during their representation of the Town, that the Town Council shall have the authority to consent to such representation on behalf of the Town after full disclosure by Gray

Robinson and after the matter is placed on the Town Council Agenda for the Council's consideration.

Finally, if the Council elects to engage Mr. Resnick and his firm, then the contract should be signed by the Mayor or his designee and not by the Town Attorney as Mr. Resnick has reflected in his proposed Engagement Letter.

MDK/gmv  
enclosures



"Gary Resnick"  
<gresnick@gray-robinson.com>  
m>

07/19/2006 11:43 AM

To <Monroe\_Kiar@davie-fl.gov>  
cc  
bcc  
Subject Fwd: Engagement Letter

Monroe

It was a pleasure speaking with you. Below please find our engagement letter that we forwarded to Martin and Susan Starke after our meeting. If you have any questions, please do not hesitate to contact me. Thanks.

Gary

Gary Resnick, Esq.  
GrayRobinson, P.A.  
401 E. Las Olas Blvd.  
Suite 1850  
Ft. Lauderdale, FL 33301  
(954) 761-8111  
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Engagement Letter.pdf



"Gary Resnick"  
<gresnick@gray-robinson.com>  
m>

07/13/2006 05:44 PM

To <Monroe\_Kiar@davie-fl.gov>

cc

bcc

Subject Information for Town Council

Monroe

Pursuant to my discussion with Martin, this provides more details as to what we will be doing for the Town.

We will prepare an ordinance setting forth the terms and conditions for use of the Town's rights of ways ("ROW"). Pursuant to changes in Florida law, the Town can no longer require agreements with all users of the ROWs, and must therefore have general code requirements setting forth requirements for permits, registration, appropriate payments to the Town, construction conditions, repair of damage, indemnification, bonds, insurance, and enforcement mechanisms including suspending or withholding permits and fines.

We will also prepare an ordinance setting forth the terms and conditions for providing cable services in the Town. The Town has 2 franchised cable providers: BellSouth and Comcast. With changes in state and federal law and potential changes likely to occur next year, it is important that the Town provide general requirements that will apply to all existing and potentially new providers of cable services. Such conditions will include the minimum level of services to be provided to residents and to the Town's facilities, construction requirements (which will tie into the rights of way ordinance), access channels, franchise application process, payments to the Town, bonds, insurance and indemnification, enforcement, and, most significantly, detailed customer service requirements.

In both cases, we will work closely with the Town's staff to ensure the ordinances address the Town's particular concerns. We would also assist with other matters pursuant to the Town's instructions.

In addition, attached please find my bio showing my background.

If you have any question, please do not hesitate to contact me. Please let me know when the engagement letter will be on the Council's agenda. Thank you for your assistance.

Gary

Gary Resnick, Esq.  
GrayRobinson, P.A.  
401 E. Las Olas Blvd.  
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Ft. Lauderdale, FL 33301  
(954) 761-8111  
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Bio from Website.DOC

Gary I. Resnick

Practice Areas

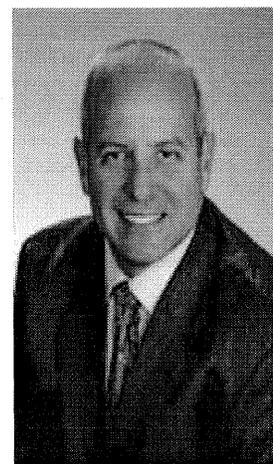
- Communications, Cable & Broadband
- Government
- Utilities

BACKGROUND:

Gary was born in Newark, New Jersey on December 11, 1959. After receiving his B.A. from Bucknell University, Gary attended Rutgers University School of Law where he received his Juris Doctor with Honors. Prior to joining the firm, Gary was the Director of Law and Public Policy for MediaOne, one of the largest cable and broadband companies.

EXPERIENCE:

Gary is a shareholder with the firm and concentrates his practice in the representation of local governments and private clients in communications and cable law, utilities and use of the rights-of-way, broadband and governmental law.



**Gary I. Resnick**  
**Fort Lauderdale office**

Gary served on the Federal Communications Commission Intergovernmental Advisory Committee from 2004-2006 and chair its rights-of-way subcommittee. Gary further serves on the Board of Directors of the National Association of Telecommunications Officers and Advisors (NATOA). Gary is also a founding officer and currently Secretary of FLATOA, the Florida Chapter of NATOA. Gary also serves on the National League of Cities Information Technology and Communications Policy Steering Committee. Gary is also a member of the Florida League of Cities Board of Directors and previously served as Chair of the Florida League's Transportation and Urban Administration Committee and the League's Telecommunications and Utilities Committee. He was also a member the Telecommunications Rights of Way Use Model Ordinances Workgroup, which drafted model ordinances for implementation of Florida's Communications Services Tax. Gary is also currently on the Board of Directors and the secretary of the Broward County League of Cities. Gary has frequently spoken at national and Florida conferences, addressing communications, cellular, cable and broadband issues. Gary has also published articles on communications providers' use of public rights-of-ways and cable issues affecting local governments. Gary practiced communications law in Washington, DC before moving to Florida, and served as an adjunct professor at the National Law Center, George Washington University From 1990-91. He also clerked for the Honorable Susan H. Black, U.S. District Court Judge for the Middle District of Florida.

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Suite 1850  
Fort Lauderdale, FL 33301  
Phone: (954) 761-8111  
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gresnick@gray-robinson.com

EDUCATION:

- Bucknell University, B.A. (1982)
- Rutgers University School of Law, J.D. (1985)
  - With Honors
  - Law Journal: Rutgers Law Journal, Associate Editor, 1984 - 1985

BAR ADMISSIONS:

- States of Florida, New Jersey, Pennsylvania & District of Columbia

CIVIC:

- South Florida Legal Guide, Top Attorney in South Florida - 2005
- City Commission, City of Wilton Manors, FL (Elected in 1998 for a four-year term, re-elected in 2002 and re-elected in 2006)

- Alzheimer's Family Center, 2001 - Present, Vice President of the Board; Trustee
- Children's Home Society, Board of Directors
- Federal Communications Commission Intergovernmental Advisory Committee

Chair of Rights-of-Way Subcommittee - 2004-06 Term

- National Association of Telecommunications Officers and Advisors (NATOA), Board of Directors
- National League of Cities, Information Technology and Communications Policy Steering Committee Member
- Florida League of Cities, Board of Directors
- FLATOA, Inc. (Florida Chapter of NATOA), Founding Member and Secretary of the Board of Directors
- Broward County, League of Cities, Board of Directors; Secretary 2006 - Present

PUBLISHED WORKS:

- Florida Communications Services Tax and the Digital Subscriber Line: To Tax or Not to Tax? Florida Bar Journal, April, 2003
- Before all Havoc Breaks Out..The need for Local Governments to Regulate the Use of Their Rights-of-Way Under Florida's Communications Services Tax Simplification Law, The Agenda City, County & Local Government Law Section, Florida Bar, May, 2001
- Responding to a Cable Operator's Petition for Effective Competition: How One Community Succeeded in Fighting a Petition, The Agenda, published by the City, County and Local Government Law Section of the Florida Bar, 2004
- "Focusing on States: A Brave New World," Journal of Municipal Telecommunications Policy, Winter, 2004

GRAY | ROBINSON  
ATTORNEYS AT LAW

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MELBOURNE  
NAPLES  
ORLANDO  
TALLAHASSEE  
TAMPA

954-761-8111

GRESNICK@GRAY-ROBINSON.COM

May 17, 2006

**VIA ELECTRONIC MAIL & U.S. MAIL**

Martin David Kiar, Esquire  
Monroe D.Kiar and Associates  
Town Attorney  
Town of Davie  
6191 SW 45th St. Suite 6151A  
Davie, Florida 33314-3454

**Re: Engagement Letter**

Dear Mr. Kiar:

Thank you again for meeting with me and Councilwoman Starkey yesterday and discussing the Town of Davie's communications issues. We are pleased that the Town of Davie ("Town") has determined to retain my services at GrayRobinson, P.A. in connection with its various communications, cable, broadband and other related legal matters. The purpose of this engagement letter is to confirm an agreement concerning our representation and the payment of our fees and expenses. This engagement letter will govern all subsequent matters in which we may become involved on the Town's behalf unless a separate arrangement is made. We will do our best to meet the Town's needs in any matters we undertake. We will also communicate regularly with your office to keep you fully informed.

1. Scope of Services. You have engaged us to represent the Town with respect to its cable, communications, broadband, and related issues. Specifically, such issues include at this time: preparing an appropriate cable ordinance to regulate cable television providers in the Town and preparing an ordinance to regulate communications and other users of the Town's rights-of-ways. In addition, our services may include other matters and we will provide services, advice and assistance pursuant to directions from your office.

2. Fees for Services. The Town will be charged and agrees to pay for our services on the basis of hourly rates established from time to time for attorneys in our firm, together with applicable taxes if any. I will have primary responsibility for this matter and will be assisted by other attorneys in the firm. For these matters, we will charge an hourly rate of \$215 per hour for my time and a blended hourly rate of \$200 for of counsels/associates. These rates represent a significant discount from our standard hourly rates. We will charge for actual time expended on the Town's behalf.

Mr. Martin Kiar, Esq.  
May 17, 2006  
Page 2

3. Costs. In addition to the fees discussed in paragraph 2, we anticipate that certain expenses may be incurred and advanced on your behalf. These expenses may include travel, filing fees, recording costs, delivery charges, long distance telephone charges, photocopies (xerox), special postage (express mail, certified mail and the like), computer research charges, court reporter expenses (including cost of transcript and court reporter's fee for attendance), court costs (such as filing fees, service of process, newspaper publication costs, subpoena costs, witness fees, recording fees, etc.), accounting and appraisal fees, fees and expenses of experts necessary to assist in the preparation and hearing of your case, investigation costs, word processing fees, computer charges and applicable lobbyist registration fees. In addition to our fees for legal services, the Town agrees to pay us for such out-of-pocket expenditures.

4. Payment of Fees and Costs. Our invoices will be submitted to you on a monthly basis and each invoice will be due and payable when rendered. You understand and agree that we have a legitimate business interest in being paid in a timely fashion and that if any invoice remains unpaid for more than 30 days after it is rendered, we reserve the right, in our discretion (subject to court approval, if necessary), to cease to provide further legal services to you. You will, however, be liable to us for the payment of any fees earned and any costs incurred by us to that time. In the event we are ultimately required to bring suit to collect any unpaid fees and costs, you understand that you will be required to pay reasonable attorneys' fees as well as legal interest on the amount of any fees and costs due us. You further understand that we have the right to retain any and all files, papers and other property coming into our possession in connection with our engagement without any liability to you until we have been paid all costs, fees and interest due us under this agreement.

5. Advanced Fees and Costs Deposit. With the assurance that all bills will be paid within thirty days, we will not request a retainer or cost deposit. However, we request that the Town pays all charges when rendered.

6. Representation of Other Clients. Because of the relatively large size of our firm and our representation of many other clients, it is possible that there may arise in the future a dispute between another client and the Town. Our acceptance of the current representation of the Town will preclude us from accepting future representations adverse to the Town that involve matters substantially related to the work we perform in the course of this engagement. In the event a conflict arises during our representation of the Town, the Town Attorney shall have the authority to consent to such representation on behalf of the Town after consultation.

7. Fees for Other Services. In the event the Town asks us to render legal services with respect to other matters, in the absence of a written agreement specifically addressing that representation, the other matters will be handled on an hourly basis, and fees and costs will be payable under the same terms and conditions as provided for in paragraph 2 of this letter, with no maximum or minimum amounts.

8. Commencement of Representation. If the foregoing is agreeable to you, please acknowledge your understanding and agreement by signing this letter and delivering it to us.

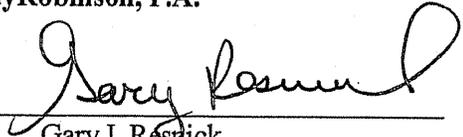
Mr. Martin Kiar, Esq.  
May 17, 2006  
Page 3

I appreciate your confidence and look forward to working with you and the Town. If you have any questions, please do not hesitate to contact me.

Very truly yours,

GrayRobinson, P.A.

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

  
Gary I. Resnick  
Shareholder

Jvc:gr

Cc: Councilwoman Susan Starkey (Via Electronic Mail)

The terms of this representation are accepted  
this \_\_\_\_ day of \_\_\_\_\_, 2006.

**TOWN OF DAVIE**

By: \_\_\_\_\_  
Monroe Kiar

Title: Town Attorney