



OFFICE OF THE TOWN CLERK

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Town Council Agenda Report

TO: Mayor and Councilmembers

FROM: Russell C. Muniz, MBA, CMC,
Acting Assistant Town Administrator

SUBJECT: Resolution

AFFECTED DISTRICT: Town-wide

TITLE OF AGENDA ITEM: A RESOLUTION OF THE TOWN OF DAVIE, FLORIDA, APPROVING AND AUTHORIZING THE MAYOR TO EXECUTE AN AGREEMENT WITH GRAYROBINSON, P.A. RELATIVE TO REGULATING THE USE OF TOWN RIGHT-OF-WAY BY COMMUNICATION CONCERNS, AND PROVIDING FOR AN EFFECTIVE DATE.

REPORT IN BRIEF: The firm of GrayRobinson, P.A. will assist the Town in drafting legislation aimed at regulating use of Town Right-of-Way by communication concerns. More specifically, fees will be applied for such usage. Regulating usage will allow the Town to better identify who owns communication lines in Town right-of-way and will also provide a revenue stream to the Town.

PREVIOUS ACTIONS: N/A

CONCURRENCES: N/A

FISCAL IMPACT: \$200-\$215 per hour/\$12,500 max. Funds will be transferred from Development Services Reserves to Planning Contractual Services (001-0403-515-0306).

RECOMMENDATION(S): Motion to approve the resolution.

ATTACHMENT(S): Resolution, Engagement Letter

RESOLUTION _____

A RESOLUTION OF THE TOWN OF DAVIE, FLORIDA, APPROVING AND AUTHORIZING THE MAYOR TO EXECUTE AN AGREEMENT WITH GRAYROBINSON, P.A. RELATIVE TO REGULATING THE USE OF TOWN RIGHT-OF-WAY BY COMMUNICATION CONCERNS, AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, many communication providers have communication lines buried in Town Right-of-Way; and

WHEREAS, the current Town legislation regulating the usage of Town Right-of-Way by communication companies needs to be enhanced to allow for better accountability; and

WHEREAS, the firm of GrayRobinson, P.A. and more specifically Attorney Gary Resnick are recognized as experts in the field of Right-of-Way regulation; and

WHEREAS, the Town and GrayRobinson, P.A. wish to enter into an agreement to enhance the Town's Right-of-Way by communication companies.

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

Section 1. The Town of Davie hereby approves and authorizes the Mayor to execute an agreement with GrayRobinson, P.A. to assist with the regulation of Town Right-of-Way by communication concerns.

Section 2. This Resolution shall take effect immediately upon its passage and adoption.

PASSED AND ADOPTED THIS _____ DAY OF _____, 2006.

MAYOR/COUNCILMEMBER

ATTEST:

TOWN CLERK

APPROVED THIS _____ DAY OF _____, 2006.

August 8, 2006

VIA ELECTRONIC MAIL & U.S. MAIL

Kenneth S. Cohen
Acting Town Administrator
Town of Davie
6191 SW 45th St. Suite 6151A
Davie, Florida 33314-3454

Re: Engagement Letter

Dear Mr. Cohen:

Thank you again for meeting with me and discussing the Town of Davie's communications issues. Pursuant to our discussion, this sets forth the terms under which the Town of Davie ("Town") has agreed to retain my services at GrayRobinson, P.A, and the payment of our fees and expenses. in connection with its various communications, cable, broadband and other related legal matters, if approved by the Town Council. 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. Pursuant to our discussion, we will agree not to incur fees and costs in excess of \$12,500, without seeking further approval from the Town.

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 Council 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.

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: Monroe D.Kiar, Town Attorney
Russel C. Muñiz, Town Clerk

The terms of this representation are accepted
this ____ day of _____, 2006.

TOWN OF DAVIE

By: _____
Mayor Thomas Truex

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