

MUTUAL ASSISTANCE AGREEMENT

This mutual assistance agreement ("Agreement") is entered into by and between FLORIDA CABLE, INC., a Florida corporation ("Florida Cable"), and THE CITY OF LEESBURG, FLORIDA, a Florida municipal corporation ("City"), each referred to in this Agreement individually as a "Party" and severally as "Parties."

RECITALS

WHEREAS, each Party owns and operates certain network assets it is willing to make available to the other Party; and,

WHEREAS, each Party anticipates constructing additional network assets that it is willing to make available to the other Party; and,

WHEREAS, each Party desires to use portions of the other Party's network assets;

NOW, THEREFORE, in consideration of the foregoing and the mutual promises and covenants of the Parties set forth in this Agreement, and other good and valuable consideration, the receipt and sufficiency of which are acknowledged by this Agreement, the Parties agree as follows:

1.0 WHAT FLORIDA CABLE SHALL DO

- 1.1 Florida Cable shall deploy a cable containing ninety-six optical fibers along a route running between: (i) an existing City – Florida Cable interconnection point in Tavares, Florida; and (ii) a Florida Cable headend site in Astatula, Florida ("Route-1"). Most of this route will consist of overlashing to an existing Florida Cable aerial cable, but some will consist of underground placement. Florida Cable shall prepare and submit all pole attachment requests and permit applications required. Route-1 is graphically depicted in Exhibit A to this Agreement. Florida Cable shall complete the deployment of the Route-1 cable no later than September 30, 2012. If Florida Cable fails to complete deployment of the Route-1 cable by September 30, 2012, Florida Cable shall pay liquidated damages to City in the amount of \$19.25 for each day beyond September 30, 2012 that deployment of the Route-1 cable is not completed.
- 1.2 Florida Cable shall deploy a cable containing twenty-four optical fibers along a path running between: (i) a point on Florida Avenue approximately opposite Astatula Elementary School; and (ii) Astatula Elementary School in Astatula, Florida. Most of this path will consist of underground infrastructure. Some of that underground infrastructure may be existing and owned by the Lake County Schools, and some of that underground infrastructure may not yet exist. Florida Cable shall complete the deployment of this cable no later than September 30, 2012. If Florida Cable fails to complete deployment of this cable by September 30, 2012, Florida Cable shall pay liquidated damages to City in the amount of \$19.25 for each day beyond September 30, 2012 that deployment of this cable is not completed.
- 1.3 Florida Cable shall grant an indefeasible right of use, IRU-1, to City for forty-eight of the optical fibers in the cable referenced in section 1.1 above. IRU-1 is further addressed in section 4.1 below. The rights and obligations of each Party under IRU-1 are as stated elsewhere in this Agreement.

- 1.4 Florida Cable shall grant an infeasible right of use, IRU-2, to City for two of the optical fibers in a cable owned by Florida Cable and running between: (i) a Florida Cable headend site in Astatula, Florida; and (ii) a point on Florida Avenue approximately opposite Astatula Elementary School in Astatula, Florida ("Route-2"). Route-2 is graphically depicted in Exhibit B to this Agreement. IRU-2 is further addressed in section 4.2 below. The rights and obligations of each Party under IRU-2 are as stated elsewhere in this Agreement.
- 1.5 Florida Cable shall grant an infeasible right of use, IRU-3, to City for four of the optical fibers contained in cables between: (i) Florida Cable's so-called "Relaze" site on U.S. Highway 27 south of Leesburg, Florida; and (ii) an existing City – Florida Cable interconnection point in Eustis, Florida ("Route-3"). Route-3 is graphically depicted in Exhibit C to this Agreement. IRU-3 is further addressed in section 4.3 below. The rights and obligations of each Party under IRU-3 are as stated elsewhere in this Agreement.
- 1.6 Florida Cable shall grant an infeasible right of use, IRU-4, to City for two of the optical fibers contained in cables between: (i) a point near the intersection of Estes Road and County Road 44A generally east of Eustis, Florida; and (ii) a point near Spring Creek Elementary School in Paisley, Florida ("Route-4"). Route-4 is graphically depicted in Exhibit D to this Agreement. IRU-4 is further addressed in section 4.4 below. The rights and obligations of each Party under IRU-4 are as stated elsewhere in this Agreement.
- 1.7 Florida Cable shall perform all routine maintenance and all emergency repairs required for cables related to IRU-1, IRU-2, IRU-3, IRU-4, and any other infeasible right of use granted by Florida Cable to City under this Agreement. Florida Cable shall perform all routine maintenance and all emergency repairs required for the conduit related to License-1 and any other license granted by Florida Cable to City under this Agreement.
- 1.8 Florida Cable shall bear the costs of any routine maintenance or emergency repair required for cables related to IRU-1, IRU-2, IRU-3, IRU-4 and any other infeasible right of use granted by Florida Cable to City under this Agreement. If City cable occupies space in the conduit referenced in License-1 or if City cable occupies space in the conduit referenced by any other license granted by Florida Cable to City under this Agreement, Florida Cable shall bear one-half of the costs of any routine maintenance or emergency repair required for the conduit related to License-1 and any other license granted by Florida Cable to City under this Agreement except for maintenance or repairs that arise from Florida Cable's negligence.
- 1.9 If an emergency repair becomes necessary for cables related to IRU-5 or any other infeasible right of use granted by City to Florida Cable under this Agreement, Florida Cable shall make repair resources such as personnel, equipment and vehicles available for City's use on such emergency repair at Florida Cable's then standard rates.
- 1.10 Florida Cable shall grant to City a license, License-1, for City to place a City-owned cable containing up to ninety-six optical fibers in a conduit which Florida Cable owns and which is attached to a bridge on State Route 19 that crosses the northeastern portion of Little Lake Harris in the general vicinity between Howey-In-The-Hills and Tavares.

2.0 WHAT CITY SHALL DO

- 2.1 City shall provide the cable(s) containing ninety-six optical fibers referred to in section 1.1 above as well as all hardware necessary to accomplish the overlying and undergrounding for the effort described in section 1.1 above. Such cable(s) and hardware shall become the property of Florida Cable upon City's delivery of cable(s) and hardware to Florida Cable.

- 2.2 City shall support preparation of any pole attachment requests and permit applications necessary for Florida Cable's undertaking the effort described in section 1.1 above. This support shall include preparation and provision of any required drawings including global positioning system data on infrastructure required for the effort.
- 2.3 City shall provide the cable(s) containing twenty-four optical fibers referred to in section 1.2 above as well as all hardware necessary to accomplish the undergrounding for the effort described in section 1.2 above. City shall provide and install a termination panel for termination of the fiber in that cable at Astatula Elementary School. City's installation of the panel shall include termination of the fibers at the panel. Such cable(s), hardware and termination panel shall remain the property of City.
- 2.4 City shall support preparation of any pole attachment requests and permit applications necessary for Florida Cable's undertaking the effort described in section 1.2 above. This support shall include preparation and provision of any required drawings including global positioning system data on infrastructure required for the effort. This support shall also include any required coordination with Lake County Schools.
- 2.5 City shall provide and install four termination panels at Florida Cable's headend site in Astatula, Florida. Two of the panels shall be used to terminate the forty-eight fibers underlying IRU-1 and shall remain City's property. The two remaining termination panels shall be used to terminate the remaining optical fibers in the cables noted in section 1.1 above and shall become property of Florida Cable upon completion of City's installation of the termination panels. City's installation of the termination panels shall include termination of the fibers at each panel.
- 2.6 City shall make payment to Florida Cable in an amount equal to Florida Cable's costs to perform the work stated in sections 1.1 and 1.2 above. Such costs shall include labor, materials, consumables, vehicle time and administrative overhead. City shall pay that amount in two payments: (i) an initial payment of ten-thousand dollars upon signature of this Agreement by both Parties; (ii) a final payment of the balance. Upon completion of the effort described in sections 1.1 and 1.2 above and confirmation that IRU-1 Fibers and IRU-2 Fibers conform to the specifications stated in Exhibit F to this Agreement, Florida Cable shall issue an invoice to City for the final payment amount per the provisions of section 6.1 of this Agreement.
- 2.7 City shall pay one-half of any increases in pole attachment fees that Florida Cable may incur along Route 1 as a result of Florida Cable's undertaking the effort described in section 1.1 above. Upon being notified of any increases in such pole attachment fees, Florida Cable shall issue an invoice to City per the provisions of section 6.1 of this Agreement.
- 2.8 City shall pay the full amount of any increases in pole attachment fees that Florida Cable may incur in direct relation to Florida Cable's undertaking the effort described in section 1.2 above. Upon being notified of any increases in such pole attachment fees, Florida Cable shall issue an invoice to City per the provisions of section 6.1 of this Agreement.
- 2.9 If an emergency repair becomes necessary for cables related to IRU-1, IRU-2, IRU-3, IRU-4, any other indefeasible right of use granted by Florida Cable to City under this Agreement, City shall make repair resources such as personnel, equipment and vehicles available for Florida Cable's use on such emergency repair at City's then standard rates.
- 2.10 City shall preposition a splice case near the Cross Tie Ranch development (located on State Route 44 just east of its intersection with County Road 437, east of Eustis, Florida and north of Mount Plymouth, Florida) on a soon-to-be-built City fiber optic cable route.

- 2.11 City shall allow an interconnection between City fiber and Florida Cable fiber at the splice case referenced in section 2.10 above for the purpose of Florida Cable's use of IRU-5.
- 2.12 City shall grant an indefeasible right of use, IRU-5, to Florida Cable for four of the optical fibers contained in cables running between: (i) the intersection of Hancock Road and State Route 50 in Clermont, Florida; and (ii) Florida Cable's so-called "Relays" site on U.S. Highway 27 south of Leesburg, Florida ("Route 5"). Route-5 is graphically depicted in Exhibit E to this Agreement. IRU-5 is further addressed in section 4.5 below. The rights and obligations of each Party under IRU-5 are as stated elsewhere in this Agreement.
- 2.13 City shall cease invoicing Florida Cable as of the start of the Initial Term of this Agreement for a 100 Mbps Ethernet circuit connecting the endpoints of Route-5.
- 2.14 City shall perform all routine maintenance and all emergency repairs required for cables related to IRU-5 and any other indefeasible right of use granted by City to Florida Cable under this Agreement.
- 2.15 City shall bear the costs of any routine maintenance or emergency repair required for cables related to IRU-5 and any other indefeasible right of use granted by City to Florida Cable under this Agreement.
- 2.16 Following City's placement of any cable in the conduit referenced by License-1, City shall ensure the presence of a pull string remaining in the conduit for Florida Cable's subsequent use.
- 2.17 If City places cable in the conduit referenced by License-1 and as long as City cable remains in that conduit, City shall pay one-half of the costs of any routine maintenance or emergency repair required for the conduit related to License-1 except for maintenance or repairs that arise from Florida Cable's negligence.

3.0 TERM

- 3.1 **Initial Term.** The Initial Term of this Agreement shall be August 28, 2012 through August 27, 2032.
- 3.2 **Renewal Term.** Unless this Agreement has been otherwise terminated in accordance with the terms of this Agreement, at the end of the Initial Term and any Renewal Term either Party may propose to renew the term of this Agreement for an additional twenty years ("Renewal Term") by providing written notice to the other Party no less than sixty days prior to the end of the then current term. The term of this Agreement shall be so renewed upon the other Party's written acceptance of the proposed Renewal Term. Such Renewal Term shall also apply to any indefeasible right of use granted under this Agreement.

4.0 THE INDEFEASIBLE RIGHTS OF USE

4.1 IRU-1

- 4.1.1 Florida Cable hereby grants as grantor and City accepts as grantee an indefeasible right of use to City for forty-eight optical fibers ("IRU-1 Fibers") in a cable that runs between: (i) an existing City – Florida Cable interconnection point in Eustis, Florida; and (ii) a Florida

Cable headend site in Astatula, Florida ("IRU-1"). That route is graphically depicted in Exhibit A to this Agreement.

- 4.1.2 IRU-1 gives City the exclusive right to use IRU-1 Fibers for any lawful purpose.
- 4.1.3 IRU-1 Fibers shall conform to the specifications stated in Exhibit F to this Agreement. In the event that the measured end-to-end optical attenuation of any of IRU-1 Fibers increases by 2 dB or greater, grantor of IRU-1 shall perform corrective maintenance pursuant to sections 5.3 and 5.4 of this Agreement to return IRU-1 Fibers to conformance to the specifications stated in Exhibit F to this Agreement.
- 4.1.4 The term of IRU-1 shall coincide with the Initial Term and any Renewal Term(s) of this Agreement.
- 4.1.5 IRU-1 shall be binding upon and inure to the benefit of the Parties and their respective permitted successors or assigns.
- 4.1.5 IRU-1 may not be assigned or transferred to another party other than through the assignment or transfer of this Agreement per the provisions of section 18 below.

4.2 IRU-2

- 4.2.1 Florida Cable hereby grants as grantor and City accepts as grantee an indefeasible right of use to City for two optical fibers ("IRU-2 Fibers") in a cable that runs between: (i) a Florida Cable headend site in Astatula, Florida; and (ii) a point on Florida Avenue approximately opposite Astatula Elementary School in Astatula, Florida ("IRU-2"). That route is graphically depicted in Exhibit B to this Agreement.
- 4.2.2 IRU-2 gives City the exclusive right to use IRU-2 Fibers for any lawful purpose.
- 4.2.3 IRU-2 Fibers shall conform to the specifications stated in Exhibit F to this Agreement. In the event that the measured end-to-end optical attenuation of any of IRU-2 Fibers increases by 2 dB or greater, grantor of IRU-2 shall perform corrective maintenance pursuant to sections 5.3 and 5.4 of this Agreement to return IRU-2 Fibers to conformance to the specifications stated in Exhibit F to this Agreement.
- 4.2.4 The term of IRU-2 shall coincide with the Initial Term and any Renewal Term(s) of this Agreement.
- 4.2.5 This IRU-2 shall be binding upon and inure to the benefit of the Parties and their respective permitted successors or assigns.
- 4.2.6 IRU-2 may not be assigned or transferred to another party other than through the assignment or transfer of this Agreement per the provisions of section 18 below.

4.3 IRU-3

- 4.3.1 Florida Cable hereby grants as grantor and City accepts as grantee an indefeasible right of use to City for four optical fibers ("IRU-3 Fibers") in a cable that runs between: (i) Florida Cable's so-called "Relaze" site on U.S. Highway 27 south of Leesburg; and (ii) an existing City – Florida Cable interconnection point in Tavares, Florida ("IRU-3"). That route is graphically depicted in Exhibit C to this Agreement.
- 4.3.2 IRU-3 gives City the exclusive right to use IRU-3 Fibers for any lawful purpose.

- 4.3.3 IRU-3 Fibers shall conform to the specifications stated in Exhibit F to this Agreement. In the event that the measured end-to-end optical attenuation of any of IRU-3 Fibers increases by 2 dB or greater, grantor of IRU-3 shall perform corrective maintenance pursuant to sections 5.3 and 5.4 of this Agreement to return IRU-3 Fibers to conformance to the specifications stated in Exhibit F to this Agreement.
- 4.3.4 The term of IRU-3 shall coincide with the Initial Term and any Renewal Term(s) of this Agreement.
- 4.3.5 This IRU-3 shall be binding upon and inure to the benefit of the Parties and their respective permitted successors or assigns.
- 4.3.6 IRU-3 may not be assigned or transferred to another party other than through the assignment or transfer of this Agreement per the provisions of section 18 below.

4.4 IRU-4

- 4.4.1 Florida Cable hereby grants as grantor and City accepts as grantee an indefeasible right of use to City for two optical fibers ("IRU-4 Fibers") in a cable that runs between: (i) a point near the intersection of Estes Road and County Road 44A generally east of Eustis, Florida; and (ii) a point near Spring Creek Elementary School in Paisley, Florida ("IRU-4"). That route is graphically depicted in Exhibit D to this Agreement.
- 4.4.2 IRU-4 gives City the exclusive right to use IRU-4 Fibers for any lawful purpose.
- 4.4.3 IRU-4 Fibers shall conform to the specifications stated in Exhibit F to this Agreement. In the event that the measured end-to-end optical attenuation of any of IRU-4 Fibers increases by 2 dB or greater, grantor of IRU-4 shall perform corrective maintenance pursuant to sections 5.3 and 5.4 of this Agreement to return IRU-4 Fibers to conformance to the specifications stated in Exhibit F to this Agreement.
- 4.4.4 The term of IRU-4 shall coincide with the Initial Term and any Renewal Term(s) of this Agreement.
- 4.4.5 This IRU-4 shall be binding upon and inure to the benefit of the Parties and their respective permitted successors or assigns.
- 4.4.6 IRU-4 may not be assigned or transferred to another party other than through the assignment or transfer of this Agreement per the provisions of section 18 below.

4.5 IRU-5

- 4.5.1 City hereby grants as grantor and Florida Cable accepts as grantee an indefeasible right of use to Florida Cable for four optical fibers ("IRU-5 Fibers") in cables that run between: (i) an existing City – Florida Cable interconnection point in Clermont, Florida near the intersection of Hancock Road and State Route 50; and (ii) Florida Cable's so-called "Relays" site on U.S. Highway 27 south of Leesburg. That route is graphically depicted in Exhibit E to this Agreement.
- 4.5.2 IRU-5 gives Florida Cable the exclusive right to use IRU-5 Fibers for any lawful purpose.
- 4.5.3 IRU-5 Fibers shall conform to the specifications stated in Exhibit F to this Agreement. In the event that the measured end-to-end optical attenuation of any of IRU-5 Fibers increases by 2 dB or greater, grantor of IRU-5 shall perform corrective maintenance pursuant to sections 5.3 and 5.4 of this Agreement to return IRU-5 Fibers to conformance to the specifications stated in Exhibit F to this Agreement.

- 4.5.4 The term of IRU-5 shall coincide with the Initial Term and any Renewal Term(s) of this Agreement.
- 4.5.5 This IRU-5 shall be binding upon and inure to the benefit of the Parties and their respective permitted successors or assigns.
- 4.5.6 IRU-5 may not be assigned or transferred to another party other than through the assignment or transfer of this Agreement per the provisions of section 18 below.

4.6 License-1

- 4.6.1 Florida Cable grants as licensor and City accepts as licensee a license for City to place one City-owned cable containing up to ninety-six optical fibers in a conduit which Florida Cable owns and which is attached to a bridge on State Route 19 that crosses the northeastern portion of Little Lake Harris in the general vicinity between Howey-In-The-Hills and Tavares.
- 4.6.2 Florida Cable hereby certifies to City that the conduit is accessible at both ends and that suitable space exists within the conduit for at least one additional cable containing up to ninety-six optical fibers to be pulled through the length of the conduit.
- 4.6.3 Florida Cable hereby certifies to City that Florida Cable has and shall maintain in-force the licenses, permits and any other authorizations necessary to allow other parties to access the conduit and place communications infrastructure into the conduit.
- 4.6.4 The term of License-1 shall coincide with the Initial Term and any Renewal Term(s) of this Agreement.
- 4.6.5 This License-1 shall be binding upon and inure to the benefit of the Parties and their respective permitted successors or assigns.
- 4.6.6 License-1 may not be assigned or transferred to another party other than through the assignment or transfer of this Agreement per the provisions of section 18 below.

- 4.7 **IRUs & License Governed by Agreement.** IRU-1, IRU-2, IRU-3, IRU-4, IRU-5, License-1 and any other indefeasible right of use or license granted under this Agreement are integral parts of this Agreement and are governed by the terms of this Agreement. The rights and obligations of each Party under this Agreement shall be the rights and obligations of the Parties as grantors and grantees of IRU-1, IRU-2, IRU-3, IRU-4, IRU-5, License-1 and any other indefeasible right of use or license granted under this Agreement.

5.0 MAINTENANCE AND REPAIR OBLIGATIONS

- 5.1 The grantor of any indefeasible right of use or license granted under this Agreement shall use commercially reasonable efforts to correct as soon as commercially practicable: (i) any failure, interruption or impairment in the operation of the fibers, including, without limitation, cuts or any other event that causes the fibers to fail to operate within the Specifications; and (ii) any failure, interruption or impairment in the usefulness of any licensed conduit space ("Emergency Maintenance"). When performing Emergency Maintenance, grantor shall use commercially reasonable efforts to minimize risk to the fibers and cables and shall provide grantee with immediate notice of the proposed emergency work.

- 5.2 The grantee of any infeasible right of use or license granted under this Agreement shall report any failure, interruption or impairment in operation of the fibers or usefulness of any licensed conduit space to grantor. Grantee shall immediately report the need for Emergency Maintenance to grantor per the contacts stated in Exhibit G of this Agreement.
- 5.3 If an emergency repair becomes necessary on any cable, conduit or other infrastructure underlying any infeasible right of use or license granted under this Agreement, each Party ("Providing Party") shall be responsible to make available to the other repair resources such as personnel, equipment and/or vehicle at Providing Party's then standard rates.
- 5.4 Prior to undertaking any routine maintenance or emergency repair activities on the cable(s) and/or fibers underlying any infeasible right of use or conduit underlying any license granted under this Agreement, grantor shall make commercially reasonable efforts to give prior notice to grantee. The Parties acknowledge that such prior notice may not be possible in some emergency situations. Should grantor be unable to provide such prior notice to grantee for an emergency repair, grantor shall notify grantee as soon as possible.
- 5.5 Grantee may request maintenance by delivering to grantor a statement of work detailing the services grantee desires to be performed, including the time schedule for such services. Upon receipt of such a statement of work, grantor shall provide an estimate of the cost and timing of such Requested Maintenance. Following grantee's acceptance of such estimate, grantor shall schedule and perform such Requested Maintenance, at grantee's expense.
- 5.6 Grantor shall issue an invoice to grantee for grantee's share of any routine maintenance or emergency repair costs per the provisions of sections 1.8, 1.9, 2.9, 2.17, 5.3 and 6 of this Agreement.

6.0 INVOICES, PAYMENTS AND DISPUTES

- 6.1 Invoices.** If either Party is owed any amounts by the other under this Agreement, that Party shall issue a written invoice stating: (i) a unique invoice reference number or descriptor; (ii) the invoice issue date; (iii) the amount(s) due; (iv) the item(s) for which payment is due; (v) the date by which payment must be made; and (vi) the address to which payment must be sent. In no event shall the date by which payment must be made be less than twenty (20) days after the invoice issue date.
- 6.2 Payments.** If either Party receives an invoice from the other under this Agreement, the owing Party shall make payment no later than the payment date stated on the invoice for all undisputed amounts.
- 6.3 Disputed Amounts.**
- 6.3.1 **Notice of Dispute.** If either Party disputes any portion of the amounts due stated on any invoice, that Party ("Disputing Party") shall notify the other ("Invoicing Party") in writing of such dispute no later than thirty days after the payment date stated on the invoice. Such written notice of dispute shall state: (i) the date the dispute is being asserted; (ii) the unique invoice reference number for the invoice for which an amount due is being disputed; (iii) the amount that is being disputed; (iv) the reason the amount is being disputed; (v) any supporting material; and (vi) the person and address to which the Invoicing Party's response should be sent.

- 6.3.2 **Response to Notice of Dispute.** The Invoicing Party shall provide a written response to the Disputing Party no later than thirty days after the date upon which the dispute was asserted. The written response shall: (i) state the date upon which the response is being made; (ii) acknowledge receipt of the notice of dispute; (iii) agreement or disagreement with the dispute; (iv) explanation of any disagreement with the dispute; and (v) statement of any amounts remaining due.
- 6.3.3 **Settlement of Dispute.** If the Parties cannot reach agreement through the process stated in sections 6.3.1 and 6.3.2 above within ninety days of the original invoice date, the Parties shall submit the matter to an independent third party for binding mediation ("Mediator"). Each Party shall submit to Mediator whatever material it deems necessary to state its position no later than five days after selection of Mediator. The Disputing Party shall nominate a person to serve as Mediator by providing written notice to the Invoicing Party. Such written notice shall provide: (i) the date upon which the nomination is being made; (ii) the nominee's name, address, telephone number, email address and professional qualifications to serve as Mediator ("Nominee"); and (iii) certification from the Disputing Party that it has taken steps to ensure no conflict of interest between Nominee and itself. The Invoicing Party shall respond no later than fourteen days after the date upon which the nomination was made, indicating: (i) the date upon the response is being made; (ii) whether the nomination is accepted or rejected; and (iii) if the nomination is rejected, the name, address, telephone number, and email address of a third party ("Third Party"). If Invoicing Party accepts Nominee, Nominee shall become Mediator. If Invoicing Party rejects Nominee, Nominee and Third Party shall select a Mediator no later than fourteen days after the date upon which Invoicing Party rejected Nominee. Each Party shall be responsible to maintain communication with Nominee or Third Party respectively with regard to identity of and contact information for selected Mediator. Mediator shall provide a written determination ("Mediator's Determination") to each Party no later than forty-five days after Mediator's selection. Mediator's Determination shall state: (i) the date upon which it is being issued; (ii) how much, if any, of the disputed amount shall remain due and payable to the Invoicing Party; (iii) the rationale used in reaching Mediator's Determination. If Mediator's Determination is that one-hundred percent of the disputed amount remains due and payable, Disputing Party shall be liable for one-hundred percent of the reasonable costs of the Nominee, Third Party and Mediator. If Mediator's Determination is that none of the disputed amount remains due and payable, Invoicing Party shall be liable for one-hundred percent of the reasonable costs of the Nominee, Third Party and Mediator. If Mediator's Determination is that some amount less than one-hundred percent of the disputed amount remains due and payable, (i) Disputing Party shall be liable for [disputed amount remaining due and payable / disputed amount] X reasonable costs of the Nominee, Third Party, and Mediator, and (ii) Invoicing Party shall be liable for the balance of the reasonable costs of the Nominee, Third Party, and Mediator.

7.0 REQUIRED RIGHTS

Grantor of any indefeasible right of use granted under this Agreement represents that, it owns or has obtained all rights, licenses, franchises, authorizations, rights-of-way and other agreements necessary from third parties or governmental authorities for the installation, maintenance and use of the cable(s) and fibers underlying the indefeasible right of use (collectively, the "Required Rights"). Grantor shall cause such Required Rights to remain effective throughout the Initial Term and any applicable Renewal Term(s). The Parties acknowledge that grantor's obligations under this Agreement are conditioned upon and shall in all respects be subject to the continuation or acquisition of such Required Rights.

8.0 GRANTEE'S LOCATIONS AND ACCESS

Unless specified to the contrary elsewhere in this Agreement, grantee of any indefeasible right of use granted under this Agreement shall provide, obtain and maintain in full force and effect during the Initial Term and any applicable Renewal Terms all necessary approvals, licenses or leases for building entrance facilities and placement of intra-building conduits and equipment through which the underlying cable(s) and/or fibers may pass into grantee's locations, all at no cost to grantor and shall provide grantor with access to such building entrance facilities, conduits and equipment on a twenty-four hour per day, seven day per week basis. Grantee shall provide all electricity, sanitary facilities, and other utilities at grantee's locations as grantor may reasonably require to provide safe and convenient working conditions in accordance with the requirements of the Occupational Safety and Health Act and all other applicable federal, state and local laws, rules, ordinances and regulations. Grantee shall be responsible for any damage or loss to any of the cable(s) and/or fibers which are in grantee's location, unless such damage or loss is caused by negligence or willful misconduct on the part of grantor.

9.0 GRANTEE'S USE OF FIBERS AND/OR CONDUIT

Notwithstanding any other provision of this Agreement to the contrary, if the cable(s), fibers, and/or conduit(s) underlying any indefeasible right of use or license granted under this Agreement are damaged as a result of grantee's misuse, abuse or use in a manner other than for which they are intended, grantee shall be responsible for the cost of repair or replacement of the damaged cable(s), fibers and/or conduit(s).

10.0 REPRESENTATIONS AND WARRANTIES

- 10.1 The Parties each warrant and represent that they are duly organized and validly existing, have the authority to execute this Agreement and have taken all requisite corporate action to approve the execution, delivery and performance of this Agreement.
- 10.2 Grantor of any indefeasible right of use or license granted under this Agreement warrants and represents to grantee that it has the authority to grant the right of use or license to grantee under this Agreement and that it will maintain such authorization for the Initial Term and any Renewal Terms of this Agreement.
- 10.3 Each Party warrants and represents that the execution of this Agreement will not violate the terms of any other agreement to which it is a party.
- 10.4 Grantee of any indefeasible right of use or license granted under this Agreement warrants and represents that it has and will maintain for the Initial Term and any Renewal Terms all authorizations required by federal, state and local law or regulation or that of any other public or private agency or entity which has jurisdiction over grantee for its operation and use of the fibers or conduit.
- 10.5 Each Party warrants and represents that it will not cause or permit the cable(s), fibers or conduit underlying any indefeasible right of use or license granted under this Agreement to become subject to any mechanic's lien, material man's lien, vendor's lien or any similar lien whether by operation of law or otherwise.
- 10.6 **OTHER THAN AS EXPRESSLY SET FORTH IN THIS AGREEMENT, GRANTOR OF ANY INDEFEASIBLE RIGHT OF USE OR LICENSE GRANTED UNDER THIS AGREEMENT MAKES NO WARRANTIES, REPRESENTATIONS, COVENANTS OR**

GUARANTEES IN CONNECTION WITH THIS AGREEMENT, THE CABLE(S), THE FIBERS, OR THE CONDUIT, WHETHER EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. THIS SECTION 10.6 SHALL SURVIVE ANY TERMINATION OR EXPIRATION OF THIS AGREEMENT.

11.0 INDEMNIFICATION AND LIMITATION OF LIABILITY

- 11.1 To the extent permitted by law, each Party agrees to defend, indemnify and hold harmless the other, and its respective officers, agents and employees from and against all liabilities, claims, damages, losses and expenses, including costs and reasonable attorneys' fees, arising out of or resulting in whole or in part from the act or omissions of itself, its officers, agents and employees, made in connection with this Agreement. Nothing contained herein, however, shall constitute a waiver by City of its sovereign immunity or the provisions of Section 768.28, Florida Statutes.
- 11.2 In claiming any indemnification hereunder, the indemnified Party shall provide the indemnifying Party with written notice of any claim which the indemnified Party believes falls within the scope of the foregoing indemnification obligations. The indemnified Party may, at its own expense, assist in the defense if it so chooses, provided that the indemnifying Party shall control such defense and all negotiations relative to the settlement of any such claim, and further provided that any settlement imposing liability or obligation on the indemnified Party shall not be final without such Party's written consent.
- 11.3 IN NO EVENT SHALL EITHER PARTY BE LIABLE TO THE OTHER FOR ANY INDIRECT, INCIDENTAL, SPECIAL OR CONSEQUENTIAL DAMAGES INCLUDING, WITHOUT LIMITATION, THOSE BASED ON LOSS OF REVENUES, PROFITS OR BUSINESS OPPORTUNITIES, EVEN IF EITHER PARTY HAD ADVISED THE OTHER OF THE POSSIBILITY OF SUCH DAMAGES.

12.0 INSURANCE

- 12.1 No later than the first day of the Initial Term each Party shall obtain and maintain through the Initial Term and any Renewal Term(s) at its sole cost and expense not less than the following insurance. The limits set forth below are minimum limits and shall not be construed to limit the liability of either Party.
- 12.1.1 Commercial General Liability Insurance, including coverage for sudden and accidental pollution legal liability, with a combined single limit of one-million dollars on an occurrence basis for bodily injury and property damage per occurrence and in the aggregate.
- 12.1.2 Workers' Compensation Insurance in amounts required by applicable law and Employer's Liability Insurance with limits not less than one-million dollars for each accident.
- 12.1.3 Automobile Liability Insurance with a combined single limit of one-million dollars for bodily injury and property damage per occurrence, including coverage for all owned, non-owned and hired vehicles.
- 12.2 **Policy Requirements.** Each Party shall name the other Party as additional insured except on the Workers' Compensation Insurance policy. Each Party shall provide the other Party with an insurance certificate confirming compliance with the insurance requirements of this section 12. The insurance certificate shall indicate that the insurer will use best efforts to notify the other Party not less than thirty days prior to any

cancellation or any material reduction in coverage (or ten days in the case of cancellation for nonpayment of premiums).

- 12.3 Waiver of Subrogation.** The Parties shall each obtain from the insurance companies providing the coverages under the Commercial General Liability policy a waiver of all rights of subrogation or recovery in favor of the other Party.
- 12.4 Blanket Policies.** Nothing in this Agreement shall prevent either Party from satisfying its insurance obligations pursuant to this Agreement under a blanket or excess or umbrella policy or policies of insurance that meet or exceed the requirements of this section 12.
- 12.5 Contractors.** If either Party uses a contractor or subcontractor to perform any work on its behalf under this Agreement, it shall require those contractors and/or subcontractors (to the extent such contractors and/or subcontractors are permitted under this Agreement) to carry and/or maintain the following minimum insurance.
- 12.5.1 Commercial General Liability Insurance (written on an occurrence policy form) or substantially similar coverage, including Excess or Umbrella Liability Insurance with a combined single limit of one-million dollars on an occurrence basis for bodily injury and property damage.
- 12.5.2 Workers' Compensation Insurance in amounts required by applicable law and Employer's Liability Insurance with limits not less than one-million dollars per accident. Such insurance shall provide coverage in the location(s) in which the work is performed and the location in which the parties are domiciled.
- 12.5.3 Automobile Liability Insurance with a combined single limit of one-million dollars each occurrence for bodily injury and property damage, including coverage for all owned, non-owned and hired vehicles.
- 12.5.4 Excess or Umbrella Liability Insurance (written on an occurrence policy form) or substantially similar coverage with a combined single limit of two-million dollars each occurrence for bodily injury and property damage, such insurance providing excess or umbrella liability coverage above primary liability limits set forth herein.
- 12.5.5 Contractors and/or subcontractors shall name the Parties as additional insureds, except on the Workers' Compensation Insurance. Contractor and/or subcontractor shall provide the Parties with an insurance certificate confirming compliance with the insurance requirements of this subsection 12.5. The insurance certificate shall indicate that the insurer will use best efforts to notify the Parties not less than thirty days prior to any cancellation or any material reduction in coverage (or ten days in the case of cancellation for nonpayment of premiums).

13.0 TAXES, FEES AND LIENS

- 13.1 The Parties acknowledge that City is exempt from the payment of Florida sales and use tax on real property rented, transient rental property rented, tangible personal property purchased or rented, or services purchased.
- 13.2 The grantor of any indefeasible right of use or license granted under this Agreement shall use reasonable efforts to keep any cables, fibers and/or conduits underlying such indefeasible right of use or license free from all liens, including, but not limited to, mechanics liens, and encumbrances by reason of the use of the fibers or conduit by the indefeasible right of use's or licence's grantee.

- 13.3 With the exception of any taxes from which City is exempt, should any fees, regardless of form, be levied and/or assessed against the grantor of any indefeasible right of use or license granted under this Agreement and or against grantor's property due to the action or inaction of the grantee of such indefeasible right of use or license, unless otherwise contemplated or reasonably construed to be contemplated under this Agreement, then the grantor shall notify grantee as soon as is reasonably practical. Grantor shall also provide grantee with copies of any and all notices, bills, and other pertinent documentation. Grantee shall, by the later of forty-five days of receipt of such written notification(s) or ten business days prior to the specified due date for payment of the fees, pay to grantor the amount(s) of such fees.
- 13.4 Florida Cable shall be responsible for any taxes arising from its construction, ownership or use of the cables, equipment and other material comprising Route-1.

14.0 NOTICES

- 14.1 Except as otherwise expressly provided in this Agreement, all notices and communications concerning this Agreement shall be in writing and shall be addressed to:

FLORIDA CABLE:

Larry English
Florida Cable
23505 State Road 40
Astor, Florida 32102

Phone: 352-267-4931
Email: lenglish@floridacable.com

CITY:

Communications Manager
Post Office Box 490630
Leesburg, Florida 34749-0630

501 West Meadow Street
Leesburg, Florida 34748-5153

Phone: 352-728-9899
Email: Communications.Manager@LeesburgFlorida.gov

- 14.2 Unless otherwise provided for in this Agreement, notices shall be sent by certified U.S. Mail, return receipt requested, or by commercial overnight delivery service, and shall be deemed delivered: if sent by U.S. Mail, twenty days after deposit; or, if sent by commercial overnight delivery service, upon verification of receipt; provided, however, that upon receipt of a returned notice marked "unclaimed" the sending Party shall make reasonable effort to contact and notify the other Party by telephone.

15.0 DEFAULT CONDITIONS AND REMEDIES

- 15.1 Each of the following shall be deemed an Event of Default by a Party under this Agreement:

- 15.1.1 Failure of a Party ("Owing Party") to pay any amount due to the other ("Owed Party") under the terms of this Agreement and such failure to pay continues for a period of fourteen days after written notice from the Owed Party to the Owing Party;
- 15.1.2 Failure by a Party ("Nonperforming Party") to perform or observe any other term, covenant, agreement or condition of this Agreement and such failure to perform or observe continues for a period of forty-five days after written notice from the other Party (provided that if such failure to perform or observe cannot be cured within such forty-five day period, this period will be extended if Nonperforming Party commences to cure such failure to perform or observe within such forty-five day period and proceeds diligently continue to effect such cure);
- 15.1.3 The filing of a tax or mechanic's lien against the cable(s), fibers or conduit underlying any indefeasible right of use or license granted under this Agreement which is not bonded or discharged within thirty days of the date that the grantee of the indefeasible right of use receives notice that such lien is filed;
- 15.1.4 An event of either Party's bankruptcy;
- 15.1.5 The use by grantee of the fibers or conduit underlying any indefeasible right of use or license granted under this Agreement in violation of any law or in aid of any unlawful undertaking;
- 15.1.6 The denial or revocation by any governmental or private authority of any authorization required of the grantee of any indefeasible right of use or license granted under this Agreement for the use of the fibers or conduit underlying such indefeasible right of use or license.
- 15.2 Upon the occurrence of an Event of Default, the non-defaulting Party without further notice to the defaulting Party (except where expressly provided for below or by applicable law) may do any one or more of the following:
 - 15.2.1 Perform on behalf of and at the expense of defaulting Party any obligation of defaulting Party under this Agreement which defaulting Party has failed to perform and of which non-defaulting Party shall have given defaulting Party notice, the cost of which performance by non-defaulting Party shall be payable by defaulting Party to non-defaulting Party upon demand;
 - 15.2.2 Exercise any other legal or equitable right or remedy which it may have. Any costs and expenses incurred by non-defaulting Party (including reasonable attorneys' fees) in enforcing any of its rights or remedies under this Agreement shall be repaid to non-defaulting Party upon demand.
- 15.3 All rights and remedies of a non-defaulting Party set forth in this Agreement shall be cumulative, and none shall exclude any other right or remedy now or hereafter allowed by or available under any statute, ordinance, rule of court, or the common law, either at law or in equity or both.

16.0 FORCE MAJEURE

- 16.1 Neither Party shall be responsible for failure or delay of performance if caused by any of the following (each a "Force Majeure Event"): an act of war, hostility, sabotage or civil disorder; fire; flood; material shortage or unavailability not resulting from the responsible Party's failure to timely place orders or take other necessary actions; act of God; electrical, internet, or telecommunication outage that is not caused by the obligated Party;

government codes, ordinances, laws, rules, regulations or restrictions; failure of a third party to grant or recognize a right or permission for a Party to perform as required by this Agreement (provided that the obligated Party has made timely and reasonable commercial efforts to obtain the same and such failure is not the result of the obligated Party's default or its negligence to act or failure to act with respect thereto); or other event outside the reasonable control of the obligated Party; provided, however, that this section 16 shall not apply to the payment of any amounts due and owing by one Party to the other.

16.2 The Party claiming relief under this section 16 shall promptly notify the other in writing of: (i) the existence of the Force Majeure Event relied on; (ii) the expected duration of the Force Majeure Event; and, (iii) the cessation or termination of the Force Majeure Event.

16.3 Both Parties will use commercially reasonable efforts to mitigate the effect(s) of any Force Majeure Event.

17.0 TERMINATION OF AGREEMENT, IRUs and LICENSES

Either Party may terminate this Agreement for any reason by providing no less than twelve months' written notice to the other Party. If either Party so terminates this Agreement, IRU-1, IRU-2, IRU-3, IRU-4, IRU-5, License-1, any other indefeasible right of use granted under this Agreement, and any other license granted under this Agreement shall terminate at the same time as does this Agreement.

18.0 ASSIGNMENT

Neither Party may assign its rights or obligations under this Agreement without the prior written consent of the other Party, which shall not be unreasonably withheld. This Agreement shall apply to any permitted transferees or assignees. Nothing in this Agreement, express or implied, confers upon any third party any right, benefit or remedy under or by reason of this Agreement.

19.0 INTELLECTUAL PROPERTY AND PUBLICITY

Neither Party is granted a license or other right (express, implied or otherwise) to use any trademarks, copyrights, service marks, trade names, patents, trade secrets or other form of intellectual property of the other Party or its affiliates without the express prior written authorization of the other Party. Neither Party shall issue any press release or other public statement relating to this Agreement, except as may be required by law or agreed between the Parties in writing.

20.0 NON-WAIVER

No course of dealing, course of performance or failure of either Party strictly to enforce any term, right or condition of this Agreement shall be construed as a waiver of any term, right or condition of this Agreement.

21.0 SEVERABILITY

If a court of competent jurisdiction finds or holds any part of this Agreement to be unenforceable, then only the so-found unenforceable provision or section shall be affected and the remaining portions of this Agreement shall continue in full force and effect.

22.0 RELATIONSHIP OF PARTIES

The relationship between the Parties is not that of partners, agents, or joint venturers for one another, and nothing contained in this Agreement shall be deemed to constitute a partnership or agency agreement between them for any purposes. The Parties, in performing any of their obligations under this Agreement, shall be independent contractors or independent parties and shall discharge their contractual obligations at their own risk.

23.0 AMENDMENTS

This Agreement may only be modified or supplemented by an instrument executed by an authorized representative of each Party.

24.0 GOVERNING LAW

This Agreement shall be governed by and construed in accordance with the laws of the State of Florida, without regard to its choice of law rules. Jurisdiction for any claim or cause of action shall lie only in Lake County, Florida.

25.0 AGREEMENT

25.1 Construction. When not inconsistent with the context in this Agreement, words used in the present tense include the future tense; words in the plural number include the singular number; words in the singular number include the plural number; and reference to either gender includes both genders.

25.2 Headings Not Part of Agreement. All headings contained in this Agreement are for reference purposes only and shall not in any way affect the meaning or interpretation of the Agreement.

25.3 Counterparts. This Agreement may be executed in one or more counterparts, all of which taken together shall constitute one instrument.

25.4 Entire Agreement. This Agreement, including any Exhibits, constitutes the entire and final agreement and understanding between the Parties with respect to the subject and supersedes all prior agreements, understandings, proposals, or representations relating to the subject, which are of no further force or effect.

REMAINDER OF THIS PAGE LEFT BLANK

CITY OF LEESBURG, FLORIDA ("City")

FLORIDA CABLE, INC. ("Florida Cable")

By _____

By 

Name _____

Name LARRY ENGLISH

Title _____

Title V. P. OPERATIONS

Date _____

Date 8-7-12

ATTESTED:

(signed)

Its City Clerk

APPROVED AS TO FORM AND CONTENT:

(signed)

Its City Attorney

EXHIBIT A
Route 1



EXHIBIT C Route 3

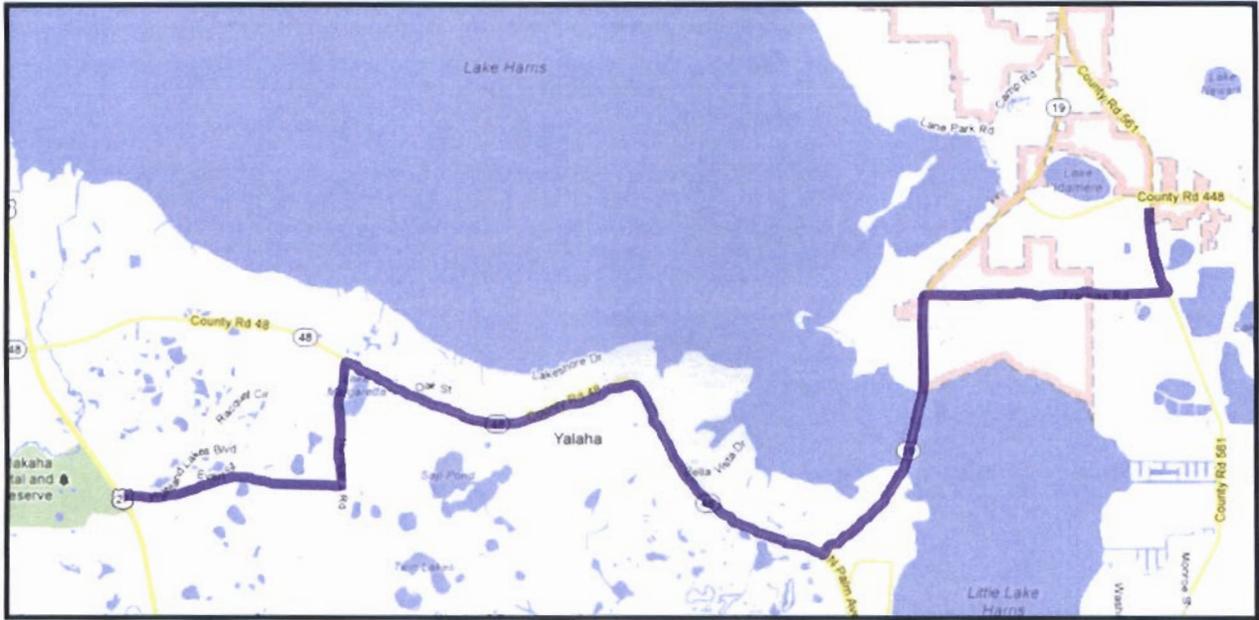


EXHIBIT E Route 5

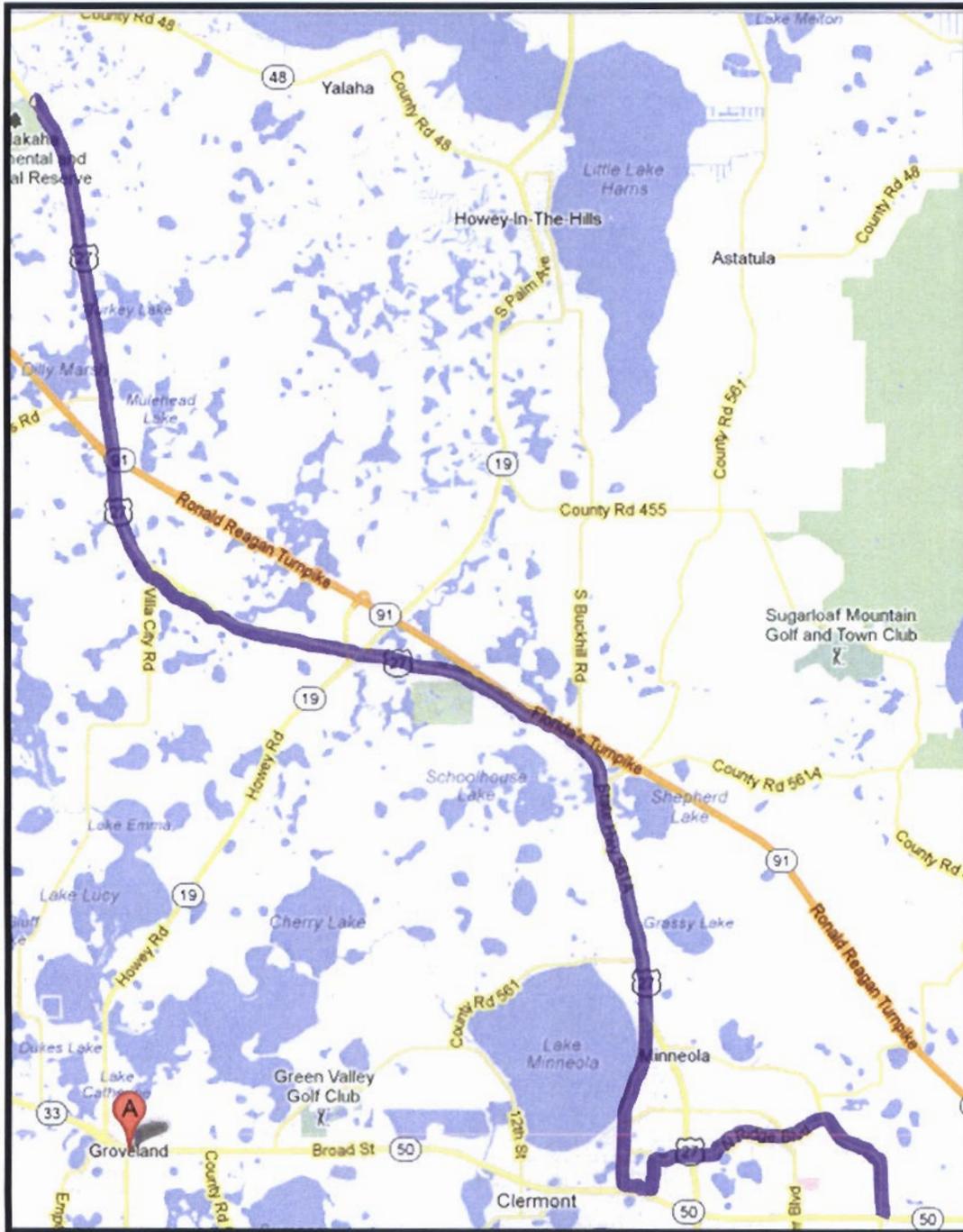


EXHIBIT F Optical Fiber Specification

I. Design Criteria - The grantor of any infeasible right of use granted under this Agreement shall endeavor to keep the number of splices in a span to a minimum, both during initial deployment of as well as during any maintenance and/or repair to the cables and/or fibers underlying an infeasible right of use.

II. Optical Fiber Specifications - Any optical fibers underlying any infeasible right of use granted under this Agreement shall meet the following specifications:

Single mode fiber conforming to the characteristics and performances indicated by ITU-T G.652 (11/2009). Optical attenuation measured by bidirectional OTDR testing shall not exceed 0.35 dB/km at 1310 nanometers (A1) and 0.20 dB/km at 1550 nanometers (A2).

III. Fusion Splice Specifications – Any splices in any optical fibers underlying any infeasible right of use granted under this Agreement shall meet the following specifications:

- All splices shall be fusion splices.
- No splice shall demonstrate a point loss of optical power greater than 0.5 dB.
- The average of all splices on a single fiber from end-to-end along any cable route shall not exceed 0.3 dB. The 0.3 dB splice average will only apply to splices between optical fibers of identical physical and optical properties (i.e. core and cladding dimensions, refractive index and optical loss characteristics).

IV. End-To-End Attenuation Acceptance Criteria – Any optical fiber underlying any infeasible right of use granted under this Agreement and tested shall demonstrate the following maximum optical attenuation:

Maximum acceptable end-to-end attenuation = $(A \times L) + (0.3 \times N_{sp}) + C$

where:

“A” is the maximum optical attenuation at each wavelength (A1 and A2) as specified in section II above.

“L” is the installed length of the cable in kilometers.

“N_{sp}” is the number of fiber splices along the subject route.

“C” is the connector/pigtail loss. The attenuation contribution of each pigtail with associated connector is considered to be 1.3 dB, comprised of 1.0 db connector loss and 0.3 dB splice loss (pigtail to OSP cable splice). Therefore, C = 1.3 dB if the span is connectorized on one end and 2.6 dB if the span is connectorized on both ends.

EXHIBIT G Escalation Schedules

CITY

Technical Service Escalation Schedule

Customers should first call lower levels and, if necessary,
proceed to higher levels.

Escalation Level	Time of Day	Contact
1	24 x 7	Communications Hotline 352-435-9463
2	24 x 7	Operations Manager 352-516-7147
3	24 x 7	Manager, Communications Utility 352-516-2750
4	24 x 7	Director, Information Technology 352-516-9030

FLORIDA CABLE

Technical Service Escalation Schedule

Customers should first call lower levels and, if necessary,
proceed to higher levels.

Escalation Level	Time of Day	Contact
1	24 x 7	Larry English 352-267-4931 lenglish@floridacable.com
2	24 x 7	Jim Pierce 407-947-0235 jim@usa2net.net
3	24 x 7	John Whitley 407-947-7936 Jwhitley51@aol.com