

State of Delaware  
Office of the Secretary of State PAGE 1

---

I, EDWARD J. FREEL, SECRETARY OF STATE OF THE STATE OF DELAWARE, DO HEREBY CERTIFY THE ATTACHED IS A TRUE AND CORRECT COPY OF THE CERTIFICATE OF AMENDMENT OF "FEC TELECOM, INC.", CHANGING ITS NAME FROM "FEC TELECOM, INC." TO "EPIX COMMUNICATIONS INCORPORATED", FILED IN THIS OFFICE ON THE THIRTEENTH DAY OF MARCH, A.D. 2000, AT 9 O'CLOCK A.M.

A FILED COPY OF THIS CERTIFICATE HAS BEEN FORWARDED TO THE NEW CASTLE COUNTY RECORDER OF DEEDS.



*Edward J. Freel*

Edward J. Freel, Secretary of State

3036751 8100

001124140

AUTHENTICATION: 0309921

DATE: 03-13-00

**CERTIFICATE OF AMENDMENT  
TO  
CERTIFICATE OF INCORPORATION  
OF  
FEC TELECOM, INC.,  
A DELAWARE CORPORATION**

The undersigned Corporation, in order to amend its Certificate of Incorporation, hereby certifies as follows:

**FIRST:** The name of the Corporation is FEC Telecom, Inc.

**SECOND:** The Corporation hereby amends its Certificate of Incorporation as follows:

Paragraph **FIRST** of the Certificate of Incorporation pertaining to the name of the Corporation is hereby amended to read as follows:

**FIRST:** The name of the Corporation is EPIK Communications Incorporated

**THIRD:** The amendment effected herein was authorized by the consent in writing, setting forth the action so taken, signed by the holders of all of the outstanding shares entitled to vote thereon, pursuant to Sections 228 and 242 of the General Corporation Law of the State of Delaware.

IN WITNESS WHEREOF, we hereto sign our names and affirm that the statements made herein are true under the penalties of perjury, this 10th day of March, 2000.

  
\_\_\_\_\_  
John D. McClellan, President

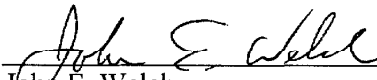
  
\_\_\_\_\_  
Heidi J. Edlins, Secretary

**EPIK COMMUNICATIONS INCORPORATED**

**OFFICER'S CERTIFICATE**

I, John E. Welch, Senior Vice President, General Counsel and Assistant Secretary of EPIK Communications Incorporated, a Delaware corporation (the "Company"), do hereby certify that a true and correct copy of certain resolutions duly adopted by the Company's Board of Directors on June 6, 2000 is attached as Attachment I. Such resolutions have not been amended, modified or rescinded and are in full force and effect on the date hereof.

IN WITNESS WHEREOF, the undersigned has hereunto set his hand this 14<sup>th</sup> day of June 2000.

By:   
John E. Welch  
Senior Vice President, General Counsel &  
Assistant Secretary

ATTACHMENT I

**EPIK COMMUNICATIONS INCORPORATED**

**BOARD OF DIRECTORS**

**RESOLUTIONS REGARDING FLORIDA DEPARTMENT OF  
TRANSPORTATION PERMIT APPLICATIONS**

**WHEREAS**, EPIK Communications Incorporated (the "Company") regularly submits applications for utility permits ("Utility Permit Applications") and periodically may submit applications for other permits ("Other Permit Applications") to the Florida Department of Transportation ("FDOT") pursuant to Section 337.401, Florida Statutes, or any successor or other related Florida statute or FDOT rule, regulation or policy; and

**WHEREAS**, Section 3.2.4 of FDOT's Utility Accommodation Manual requires that the signature of either the owner of the Company, or an approved representative, whose name or position/title is on file with FDOT, must appear on a Utility Permit Application, it is therefore:

**RESOLVED**, that the persons listed on the Corporate Resolution, Delegation, and Special Power of Attorney form attached as Exhibit A are hereby granted specific authority to sign and submit to FDOT on behalf of the Company the types of permit applications and related documents, agreements and instruments specified opposite their respective names on Exhibit A.

**RESOLVED**, that the resolutions set forth on Exhibit A are adopted and approved in their entirety.

**RESOLVED**, that the signing authority granted by the foregoing resolutions is expressly limited to the signing of Utility Permit Applications only, except with respect to the President, Executive Vice Presidents, Senior Vice President and Director of Network Operations, who are authorized to sign and submit both Utility Permit Applications and all Other Permit Applications and related documents, agreements and instruments.

**RESOLVED**, that each of the officers of the Company and the Director of Network Operations is hereby authorized and empowered, in the name and on behalf of the Company, to take such further actions and to execute and deliver such other instruments or documents as each may deem necessary or

desirable to carry out the purposes of the foregoing resolutions and those set forth on Exhibit A, including, without limitation, to file a certified copy of appropriate portions of these resolutions and Exhibit A with FDOT, the taking of such actions or the execution and delivery of such instruments or documents to be conclusive evidence of the necessity or desirability thereof.

**RESOLVED**, that any action taken by any of the officers of the Company or the Director of Network Operations prior to the adoption of these resolutions and those in Exhibit A that is within the authority conferred herein be, and hereby is, ratified, confirmed and approved.

EXHIBIT A

**STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION  
CORPORATE RESOLUTION, DELEGATION, AND SPECIAL POWER OF ATTORNEY**

**NOW, THEREFORE, BE IT RESOLVED BY EPIK COMMUNICATIONS INCORPORATED, HEREINAFTER REFERRED TO AS THE "UAO", THAT:**

1. The positions, the title of which appears in the chart below, are hereby delegated the authority, and the persons, the names of whom appear in the chart below, are hereby appointed as attorneys-in-fact for the UAO, to approve and execute on behalf of and in the name of the UAO, any specified document type listed in the chart below next to that position or person between the UAO and the **STATE OF FLORIDA, DEPARTMENT OF TRANSPORTATION** (hereinafter referred to as the "FDOT") and all other documents, agreements, and instruments which are necessary in connection with the document type specified.

2. This delegation and appointment shall remain in full force and effect, and the FDOT shall be entitled to rely upon this delegation and appointment, until written notice of the modification, rescission, or revocation of this delegation and appointment, in whole or in part, in the form of a corporate resolution, has been actually delivered to the State Utility Engineer of the FDOT at its central office in Tallahassee, Florida, with copies to the District Utility Engineer of each District of the FDOT. No such modification, rescission, or revocation shall, in any event, be effective with respect to any documents executed or actions taken pursuant to this delegation and appointment prior to the actual delivery of written notice of such modification, rescission, or revocation to the FDOT as specified above.

3. This delegation and appointment shall not be exclusive and shall not be deemed to limit the authority of any other position or person which may otherwise have authority for the UAO.

<b>Name of Representative</b>	<b>Title of Representative</b>	<b>Approved to Sign</b> (Please check or specify type below)	
<small>(If by NAME Please Type or Print approved Names)</small>	<small>(If by TITLE Please Type or Print approved Titles)</small>	<b>All</b>	<b>Specified Document Type</b>
John D. McClellan	President	All	
Benjamin Finzi	Executive Vice President	All	
Robert J. Byrne	Executive Vice President	All	
John E. Welch	Senior Vice President	All	
Richard Cratem	Director of Network Operations	All	
Bill Rhodes	NOC Manager		Utility Permit Applications
Wayne Gibbs	Support Manager		Utility Permit Applications
Rick Barnes	Outside Plant Engineering Manager		Utility Permit Applications
Mike Regan	OSP Engineer		Utility Permit Applications
Craig Petrie	OSP Project Manager		Utility Permit Applications
Ron Porter	Construction Manager		Utility Permit Applications
Howard Zachman	OSP Engineer		Utility Permit Applications
Bill Rodabaugh	Construction Project Manager		Utility Permit Applications
Marc Wasem	Construction Project Manager		Utility Permit Applications
Charlie Todd	OSP Engineer		Utility Permit Applications
Tom Miller	OSP Engineer		Utility Permit Applications
Don Crumpacker	OSP Engineer		Utility Permit Applications
Roger LaPierre	Project Manager		Utility Permit Applications
Ernie Elias	Project Manager		Utility Permit Applications
Denise Hampton	Project Manager		Utility Permit Applications
David Long	Project Manager/OSP Engineer		Utility Permit Applications
Barry Mayer	OSP Engineer		Utility Permit Applications

STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION  
**UTILITY MASTER AGREEMENT**  
(AT UAO AND FDOT EXPENSE COMBINED)

Form No. 710-010-20  
UTILITIES  
7/99

THIS AGREEMENT, entered into this 1<sup>st</sup> day of November, year of 1999, by and between the STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION, hereinafter referred to as the "FDOT", and F&C Telecom, Inc., hereinafter referred to as the "UAO";

**WITNESSETH:**

**WHEREAS**, the UAO owns, or may in the future own, certain utility facilities which are or may in the future be located on any public roads or publicly owned rail corridors, hereinafter referred to as the "Facilities" (said term shall be deemed to include utility facilities as the same may be relocated, adjusted, or placed out of service); and

**WHEREAS**, the FDOT, engages in projects which involve constructing, reconstructing, or otherwise changing public roads and other improvements located on public roads or publicly owned rail corridors, hereinafter referred to as either the "Project" or "Projects"; and

**WHEREAS**, the Projects may require the location (vertically and/or horizontally), protection, relocation, adjustment, or removal of the Facilities, or some combination thereof, hereinafter referred to as "Utility Work"; and

**WHEREAS**, the UAO, in accordance with and subject to the limitations of the terms and conditions of this Agreement, may be entitled to be reimbursed for some of the Utility Work and may, under the law of the State of Florida, be obligated to perform other Utility Work at the UAO's sole cost and expense; and

**WHEREAS**, the FDOT and the UAO desire to enter into a master agreement which establishes the terms and conditions applicable to the Utility Work, both for Utility Work to be reimbursed and for Utility Work to be performed at the sole cost and expense of the UAO, and eliminates the need for an individual agreement on each Project;

**NOW, THEREFORE**, in consideration of the premises and the mutual covenants contained herein, the FDOT and the UAO hereby agree as follows:

**1. Issuance of Utility Order**

In the event that the FDOT determines that Utility Work may be necessary for any Project, the following procedure shall apply, provided that the UAO and the FDOT may mutually agree to combine or eliminate all or any portion

STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION  
**UTILITY MASTER AGREEMENT**  
(AT UAO AND FDOT EXPENSE COMBINED)

Form No. 710-010-20  
UTILITIES  
7/99

of this procedure on any Project:

a. **First Contact.**

1. The **FDOT** shall send a statutory written notice to the **UAO** specifying the applicable Project, providing the **FDOT's** then current plans for the Project, and specifying the return date by which the **UAO** must comply with subparagraphs 1.a.(2) and (3), which return date shall be no earlier than thirty (30) days from the date of the notice.
2. The **UAO** shall, by the date specified by the **FDOT** in the written notice, return a copy of the **FDOT'S** plans on which the location of the existing Facilities is marked or verified to **FDOT'S** satisfaction.
3. If the **UAO** believes that the Utility Work is reimbursable under this Agreement, the **UAO** shall, by the date specified by the **FDOT** in the written notice, also return documentation of the basis for entitlement to reimbursement under the provisions of this Agreement, and a preliminary estimate of the cost for the Utility Work. Failure to timely return such documentation shall make the Utility Work not reimbursable.

b. **Second Contact.**

1. After receipt of the documents required by subparagraphs 1. a. (2) and (3), the **FDOT** shall, at the appropriate time, send a notice to the **UAO**, along with an updated set of plans for the Project, specifying the time and place of a mandatory utility meeting.
2. A representative of the **UAO** familiar with the Project and the Facilities shall attend the meeting and be prepared to discuss the Project and the design for the Utility Work. The representative shall bring to the meeting a copy of the **FDOT's** updated plans marked with any existing Facilities not accurately shown thereon and marked with a preliminary Utility Work design concept.

c. **Third Contact.**

1. After the mandatory utility meeting, the **FDOT** shall, at the appropriate time, send the **UAO**:



**UTILITY MASTER AGREEMENT**  
(AT UAO AND FDOT EXPENSE COMBINED)

- a. Additional updated FDOT plans for the Project;
  - b. The FDOT'S then current utility relocation schedule form;
  - c. If the Utility Work is reimbursable, the FDOT'S then current utility estimate summary form;
  - d. If not previously provided, a notice verifying eligibility for reimbursement or verifying that the Utility Work is not reimbursable;
  - e. A notice specifying the return date by which the UAO must comply with subparagraph 1.c.(2);
  - f. A notice specifying whether a utility permit will be required for the Utility Work;
  - g. A notice verifying the version of the Utility Accommodation Manual that will apply to the Utility Work;
  - h. The instruction form then being used by the FDOT for providing direction in following this process; and
  - i. Such other information the FDOT deems pertinent.
2. Within the time frame specified in this third contact notice, the UAO shall return to the FDOT the information required on the FDOT'S forms specified above, along with final plans for the Utility Work, hereinafter referred to as the "Plans". If the Utility Work is reimbursable under this Agreement, the UAO shall also return, within said time frame, a detailed cost breakdown for the Utility Work, hereinafter referred to as the "Estimate". Unless otherwise specifically directed in writing, the Plans and the Estimate shall include any and all activities and work effort required to perform the Utility Work, including, but not limited to, all clearing and grubbing, survey work, and applicable permit notices, and shall include a traffic control plan. The UAO may not assume that any work will be performed by the FDOT's contractor or other parties.
3. After receipt of a completed utility relocation schedule form, the Estimate, and the Plans, the FDOT will review them for sufficiency, which includes, but is not necessarily limited to, compliance and consistency with the FDOT'S then current Utility Accommodation Manual, the FDOT'S Plans and specifications for the Project, and the FDOT'S instruction form.

**UTILITY MASTER AGREEMENT**  
(AT UAO AND FDOT EXPENSE COMBINED)

4. In the event that the FDOT finds any deficiencies in the completed schedule form, the Estimate, or the Plans, the FDOT will notify the UAO in writing of the deficiencies and the UAO will correct the deficiencies and return corrected documents within the time stated in the notice. The FDOT's review and approval of the documents shall not relieve the UAO from responsibility for subsequently discovered errors or omissions.
5. After receipt of a corrected utility relocation schedule form (hereinafter referred to as the "Schedule"), Estimate, and Plans, the FDOT will issue a work order to the UAO which authorizes the Utility Work to proceed upon the UAO obtaining a utility permit for the Utility Work from the FDOT, if applicable.
6. The UAO shall notify the appropriate FDOT office in writing prior to beginning the Utility Work and when the UAO stops, resumes, or completes the Utility Work.

**2. Performance of Utility Work**

- a. The UAO shall perform the Utility Work in accordance with the Schedule and the Plans. Time shall be of the essence in complying with the total time shown by the Schedule for the Utility Work as well as any and all interim time frames specified therein. The Utility Work shall be performed in a manner and using such methods so as to not cause a delay to the FDOT or its contractors in the prosecution of the Project. The UAO shall be responsible for all costs incurred as a result of any delay to the FDOT or its contractors caused by errors or omissions in the Plans, Schedule, or Estimate (including inaccurate location of the Facilities); failure to perform the Utility Work in accordance with the Plans and Schedule; or failure of the UAO to comply with any other obligation under this Agreement or under the law.
- b. All Utility Work shall be performed by UAO's own forces or its contractor. The UAO shall be responsible for obtaining any and all permits that may be necessary to perform the Utility Work. The FDOT'S Engineer (as that term is defined by the FDOT's Standard Specifications for Road and Bridge Construction) has full authority

STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION  
**UTILITY MASTER AGREEMENT**  
(AT UAO AND FDOT EXPENSE COMBINED)

Form No. 710-010-20  
UTILITIES  
7/99

over the Project and the UAO shall be responsible for coordinating and cooperating with the FDOT'S Engineer. In so doing, the UAO shall make such adjustments and changes in the Plans and Schedule as the FDOT'S Engineer shall determine are necessary for the prosecution of the Project and shall stop or work or modify work upon order of the FDOT'S Engineer as determined by the FDOT'S Engineer to be necessary for public health, safety or welfare. The UAO shall not be responsible for the cost of delays caused by such adjustments or changes unless they are attributable to the UAO pursuant to subparagraph 2 a. All changes shall be documented in writing to the UAO by the Engineer.

**3. Claims Against UAO**

- a. In the event the contractor provides a notice of intent to make a claim against the FDOT relating to the Utility Work, the FDOT will, in accordance with the FDOT's procedure, notify the UAO of the notice of intent and the UAO will thereafter keep and maintain daily field reports and all other records relating to the intended claim.
- b. In the event the contractor makes any claim against the FDOT relating to the Utility Work, the FDOT will notify the UAO of the claim and the UAO will cooperate with the FDOT in analyzing and resolving the claim within a reasonable time. Any resolution of any portion of the claim directly between the UAO and the FDOT'S contractor shall be in writing, shall be subject to written FDOT concurrence, and shall specify the extent to which it resolves the claim against the FDOT.
- c. If the Utility Work is reimbursable under this Agreement, the FDOT may withhold reimbursement to the UAO until final resolution (including any actual payment required) of all claims relating to the Utility Work. The right to withhold shall be limited to actual claim payments made by FDOT to FDOT's contractor.

**4. Reimbursement for Utility Work**

- a. The Utility Work will be reimbursable under this Agreement when the Project is federal aid eligible pursuant to the provisions of Section 337.403(1)(a), Florida Statutes, when a written agreement incidental

STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION  
**UTILITY MASTER AGREEMENT**  
(AT UAO AND FDOT EXPENSE COMBINED)

Form No. 710-010-20  
UTILITIES  
7/99

to a right-of-way acquisition process requires the FDOT to compensate the UAO for the costs of any subsequent relocation of the Facilities, or when the UAO holds a compensable land interest under Florida condemnation law in the existing location of the Facilities at the time of the Project. In any other circumstances, the Utility Work will be performed at the sole cost and expense of the UAO. Failure of the UAO to timely provide documentation of the basis for reimbursement as required by subparagraph 1.a.(3) of this Agreement shall make the Utility Work not reimbursable. Any costs not included in the approved Plans and Estimate, except such additional costs as would be allowed to be added to a contract by supplemental agreement under Section 337.11 of the Florida Statutes (1995), and any location work (vertically or horizontally) or other engineering work performed to determine the compensability of the Utility Work shall not be reimbursed by the FDOT. The UAO shall obtain written approval from the FDOT prior to performing Utility Work which exceeds the Estimate or which is not in the Plans.

- b. The method to be used in calculating the cost of the Utility Work which is reimbursable shall be one of the following, as specified at the time of the issuance of the work order:
- (1) Actual and related indirect costs accumulated in accordance with a work order accounting procedure established by the FDOT.
  - (2) Actual and related indirect costs accumulated in accordance with an established accounting procedure developed by the UAO and approved by the FDOT. (If this option is selected, the UAO shall provide written evidence of such approval).
  - (3) An agreed lump sum as supported by a detailed analysis of estimated costs prepared during the process established by paragraph 1.
- c. In determining the amount of the cost of the Utility Work to be reimbursed, a credit will be required for any increase in the value of the new Facility and for any salvage derived from the old Facility. These credits shall be determined as follows:

STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION  
**UTILITY MASTER AGREEMENT**  
(AT UAO AND FDOT EXPENSE COMBINED)

Form No. 710-010-20  
UTILITIES  
7/99

1. Increase in value credit.
  - (a) Expired Service Life. If an entirely new Facility is constructed and the old Facility retired, credit for the normally-expected service life of the old Facility applies, and will be mutually determined by the UAO and the FDOT as of the time of the issuance of the work order. This credit shall be deducted proportionally from each invoice for the Utility Work.
  - (b) Upgrading. A percentage of the total cost of the Utility Work, based on the extent of the betterment obtained from the new Facilities, to be determined as of the time of the issuance of the work order, will be applied equally to each billing for the Utility Work.
2. Salvage Value. If the Utility Work is reimbursable under this Agreement, the FDOT shall receive salvage value credit for any salvage which shall accrue to the UAO as a result of the above Utility Work. It is the UAO's responsibility to ensure recovery of salvageable materials and to report the fair market value of same to the FDOT. This Salvage Value credit shall be applied as provided in subparagraph 5 c.

5. **Invoice Procedures For Reimbursable Work**

If the Utility Work is reimbursable under this Agreement, the following terms and conditions apply to all invoices submitted pursuant to this Agreement for reimbursement of the costs of the Utility Work:

- a. The UAO may, unless reimbursement is on a lump sum basis pursuant to subparagraph 4. b. (3) hereof, at monthly intervals, submit progress invoices for all costs incurred for the period covered by the invoice. In addition to deductions for applicable credits, which deductions shall be shown on the invoice, the FDOT will retain ten (10%) percent of such progress invoices. Retainage will be paid with the final invoice. If reimbursement is on a lump sum basis pursuant

STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION  
**UTILITY MASTER AGREEMENT**  
(AT UAO AND FDOT EXPENSE COMBINED)

Form No. 710-010-20  
UTILITIES  
7/99

to subparagraph 4. b. (3) hereof, the lump sum invoice shall be submitted as a final invoice pursuant to subparagraph 5. b. below.

- b. The UAO shall submit a final invoice to the FDOT for payment of all Utility Work within one hundred and eighty (180) days after written notification from the FDOT of final acceptance of the Utility Work. The UAO waives all right of reimbursement for invoices submitted more than one hundred eighty (180) days after written notification of final acceptance of the Utility Work. The FDOT does not waive its right to reject future untimely invoices by acceptance and payment of any invoices not submitted within one hundred eighty (180) days after written notification of final acceptance of the Utility Work.
- c. All invoices shall be arranged in the order of items contained in the Estimate submitted pursuant to paragraph 1. The totals for labor, overhead, travel expenses, transportation, equipment, materials and supplies, handling costs and all other services shall be shown in such a manner as will allow ready comparison with the approved Plan and Estimate. Materials shall be itemized where they represent major components. Salvage credits from recovered and replaced permanent and recovered temporary materials shall be reported in relative position with the charge for the replacement or the original charge for temporary use.
- d. All invoices shall be submitted in triplicate and shall show the description and site of the project and the location where the records and accounts invoiced can be audited. Adequate reference shall be made in the invoicing to the UAO's records, accounts, and other relevant documents.
- e. All cost records and accounts shall be maintained in the auditable condition for a period of eight hundred twenty (820) days after final payment is received by the UAO and shall be subject to audit by a representative of the FDOT at any reasonable time during this eight hundred twenty (820) day period.
- f. Invoices for fees or other compensation for services or expenses shall be submitted in detail sufficient for a proper preaudit and postaudit thereof. Such detail shall include, but not be limited to, a separation of costs for work performed by UAO'S employees and work

STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION  
**UTILITY MASTER AGREEMENT**  
(AT UAO AND FDOT EXPENSE COMBINED)

Form No. 710-010-20  
UTILITIES  
7/99

performed by UAO'S contractor.

- g. Invoices for any travel expenses shall be submitted in accordance with Section 112.061, Florida Statutes. A state agency may establish rates lower than the maximum provided in Section 112.061, Florida Statutes.
- h. Upon receipt of a invoice, the FDOT has thirty (30) days to inspect and approve the goods and services. The FDOT has twenty (20) days from the latter of the date the invoice is received or the goods or services are received, inspected and approved to deliver a request for payment (voucher) to the Department of Banking and Finance or to return the invoice to the UAO.
- i. If a warrant in payment of an invoice is not issued within forty (40) days from the latter of the date the invoice is received or the goods or services are received, inspected and approved, a separate interest penalty, as established pursuant to Section 215.422, Florida Statutes, will be due and payable in addition to the invoice amount, to the UAO. Interest penalties of less than one (1) dollar will not be enforced unless the UAO requests payment. Invoices which have to be returned to the UAO because of UAO's preparation errors, will result in a delay in the payment. The invoice payment requirements do not start until a properly completed invoice is provided to the FDOT. In the event of a bona fide dispute, the FDOT'S voucher shall contain a statement of the dispute and authorize payment only of the undisputed amount.
- j. In accordance with Section 287.0582, Florida Statutes, the State of Florida's performance and obligation to pay under this contract is contingent upon an annual appropriation by the legislature.
- k. A Vendor Ombudsman has been established within the Department of Banking and Finance. The duties of this individual include acting as an advocate for vendors who may be experiencing problems in obtaining timely payment(s) from a state agency. The Vendor Ombudsman may be contacted at (850) \_\_\_\_\_ or by calling State Comptroller's Hotline, 1-800-\_\_\_\_\_.
- l. In accordance with the Florida Statutes, the FDOT, during any fiscal

STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION  
**UTILITY MASTER AGREEMENT**  
(AT UAO AND FDOT EXPENSE COMBINED)

Form No. 710-010-20  
UTILITIES  
7/99

year, shall not expend money, incur any liability, or enter into any contract which, by its terms, involves the expenditure of money in excess of the amounts budgeted as available for expenditure during such fiscal year. Any contract, verbal or written, made in violation of this subsection is null and void, and no money may be paid on such contract. The FDOT shall require a statement from the comptroller of the FDOT that funds are available prior to entering into any such contract or other binding commitment of funds. Nothing herein contained shall prevent the making of contracts for periods exceeding one (1) year, but any contract so made shall be executory only for the value of the services to be rendered or agreed to be paid for in succeeding fiscal years; and this paragraph shall be incorporated verbatim in all contracts of the FDOT which are for an amount in excess of \$25,000.00 and which have a term for a period of more than one (1) year. For this purpose, the individual work orders shall be considered to be the binding commitment of funds.

- m. **PUBLIC ENTITY CRIME INFORMATION STATEMENT:** A person or affiliate who has been placed on the convicted vendor list following a conviction for a public entity crime may not submit a bid on a contract to provide any goods or services to a public entity, may not submit a bid on a contract with a public entity for the construction or repair of a public building or public work, may not submit bids on leases of real property to a public entity, may not be awarded or perform work as a contractor, supplier, subcontractor, or consultant under a contract with any public entity, and may not transact business with any public entity in excess of the threshold amount provided in Section 287.017, for CATEGORY TWO for a period of 36 months from the date of being placed on the convicted vendor list.

## 6. **Out of Service Facilities**

No Facilities shall be left in place on FDOT's Right of Way after the Facilities are no longer active (hereinafter "Placed out of service/Deactivated") unless specifically identified as such in the Plans. The following terms and conditions shall apply to Facilities Placed out of service/Deactivated, but only to said Facilities Placed out of service/Deactivated:

- a. The UAO acknowledges its present and continuing ownership of and responsibility for Facilities Placed out of service/Deactivated.



STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION  
**UTILITY MASTER AGREEMENT**  
(AT UAO AND FDOT EXPENSE COMBINED)

Form No. 710-010-20  
UTILITIES  
7/99

- b. The FDOT agrees to allow the UAO to leave the Facilities within the right of way subject to the continuing satisfactory performance of the conditions of this Agreement by UAO. In the event of a breach of this Agreement by UAO, the Facilities shall be removed upon demand from the FDOT in accordance with the provisions of subparagraph 6. e. below.
- c. The UAO shall take such steps to secure the Facilities and otherwise make the Facilities safe in accordance with any and all applicable local, state or federal laws and regulations and in accordance with the legal duty of the UAO to use due care in its dealings with others. The UAO shall be solely responsible for gathering all information necessary to meet these obligations.
- d. The UAO shall keep and preserve all records relating to the Facilities, including, but not limited to, records of the location, nature of, and steps taken to safely secure the Facilities and shall promptly respond to information requests concerning the Facilities that are Placed out of service/Deactivated of the FDOT or other permittees using or seeking use of the right of way.
- e. The UAO shall remove the Facilities upon 30 days prior written request of the FDOT in the event that the FDOT determines that removal is necessary for FDOT use of the right of way or in the event that the FDOT determines that use of the right of way is needed for other active utilities that cannot be otherwise accommodated in the right of way. In the event that the Facilities that are Placed out of Service/Deactivated would not have qualified for reimbursement under this Agreement, removal shall be at the sole cost and expense of the UAO and without any right of the UAO to object or make any claim of any nature whatsoever with regard thereto. In the event that the Facilities that are Placed out of service/Deactivated would have qualified for reimbursement only under Section 337.403 (1)(a) of the Florida Statutes, removal shall be at the sole cost and expense of the UAO and without any right of the UAO to object or make any claim of any nature whatsoever with regard thereto because such a removal would be considered to be a separate future relocation not necessitated by the construction of the project pursuant to which they were Placed out of service/Deactivated, and would therefore not be eligible and approved for reimbursement by the Federal Government.

STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION  
**UTILITY MASTER AGREEMENT**  
(AT UAO AND FDOT EXPENSE COMBINED)

Form No. 710-010-20  
UTILITIES  
7/99

In the event that the Facilities that are Place out of service/Deactivated would have qualified for reimbursement for other reasons, removal of the out of service Facilities shall be reimbursed by the FDOT as though the Facilities had not been Placed out of service/Deactivated. Removal shall be completed within the time specified in the FDOT's notice to remove. In the event that the UAO fails to perform the removal properly within the specified time, the FDOT may proceed to perform the removal at the UAO's expense pursuant to the provisions of Sections 337.403 and 337.404 of the Florida Statutes.

- f. Except as otherwise provided in subparagraph e. above, the UAO agrees that the Facilities shall forever remain the legal and financial responsibility of the UAO. The UAO shall reimburse the FDOT for any and all costs of any nature whatsoever resulting from the presence of the Facilities within the right of way. Said costs shall include, but shall not be limited to, charges or expenses which may result from the future need to remove the Facilities or from the presence of any hazardous substance or material in the Facilities or the discharge of hazardous substances or materials from the Facilities. Nothing in this paragraph shall be interpreted to require the UAO to indemnify the FDOT for the FDOT's own negligence; however, it is the intent that all other costs and expenses of any nature be the responsibility of the UAO.

**7. Default**

- a. In the event that the UAO breaches any provision of this Agreement, then in addition to any other remedies which are otherwise provided for in this Agreement, the FDOT may exercise one or more of the following options, provided that at no time shall the FDOT be entitled to receive double recovery of damages:
- (1) Terminate this Agreement if the breach is material and has not been cured within 60 days from written notice thereof from FDOT.
  - (2) Pursue a claim for damages suffered by the FDOT or the public.

**UTILITY MASTER AGREEMENT**  
(AT UAO AND FDOT EXPENSE COMBINED)

- (3) If the Utility Work is reimbursable under this Agreement, withhold reimbursement payments until the breach is cured. The right to withhold shall be limited to actual claim payments made by FDOT to third parties.
  - (4) If the Utility Work is reimbursable under this Agreement, offset any damages suffered by the FDOT or the public against payments due under this Agreement for the same Project. The right to offset shall be limited to actual claim payments made by FDOT to third parties.
  - (5) Suspend or terminate the issuance of further permits to the UAO for the placement of Facilities on FDOT property if the breach is material and has not been cured within 60 days from written notice thereof from FDOT.
  - (6) Pursue any other remedies legally available.
  - (7) Perform any work with its own forces or through contractors and seek repayment for the cost thereof under Section 337.403(3) of the Florida Statutes.
- b. In the event that the FDOT breaches any provision of this Agreement, then in addition to any other remedies which are otherwise provided for in the Agreement, the UAO may exercise one or more of the following options:
- (1) Terminate this Agreement if the breach is material and has not been cured within 60 days from written notice thereof from the UAO.
  - (2) If the breach is a failure to pay an invoice for Utility Work which is reimbursable under this Agreement, pursue any statutory remedies that the UAO may have for failure to pay invoices.
  - (3) Pursue any other remedies legally available.
- c. Termination of this Agreement shall not relieve either party from any obligations it has pursuant to other agreements between the parties nor from any statutory obligations that either party may have with

STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION  
**UTILITY MASTER AGREEMENT**  
(AT UAO AND FDOT EXPENSE COMBINED)

Form No. 710-010-20  
UTILITIES  
7/99

regard to the subject matter hereof.

**8. Indemnification**

**For government-owned utilities,**

To the extent provided by law, the **UAO** shall indemnify, defend and hold harmless the **FDOT** and all of its officers, agents and employees from any claim, loss, damage, cost, charge or expense arising out of any acts, action, error, neglect or omission by the **UAO**, its agents, employees, or subcontractors during the performance of the Agreement, whether direct or indirect, and whether to any person or property to which **FDOT** or said parties may be subject, except that neither the **UAO**, its agents, employees or subcontractors will be liable under this section for damages arising out of the injury or damage to persons or property directly caused by or resulting from the negligence of the **FDOT** or any of its officers agents or employees during the performance of this Agreement.

When the **FDOT** receives a notice of claim for damages that may have been caused by the **UAO** in the performance of services required under this Agreement, the **FDOT** will immediately forward the claim to the **UAO**. The **UAO** and the **FDOT** will evaluate the claim and report their findings to each other within fourteen (14) working days and will jointly discuss options in defending the claim. After reviewing the claim, the **FDOT** will determine whether to require the participation of the **UAO** in the defense of the claim or to require the **UAO** to defend the **FDOT** in such claim as described in this section. The **FDOT's** failure to notify the **UAO** of a claim shall not release the **UAO** from any of the requirements of this section. The **FDOT** and the **UAO** will pay their own costs for the evaluation, settlement negotiations, and trial, if any. However, if only one party participates in the defense of the claim at trial, that party is responsible for all costs.

**For non-government-owned utilities,**

The **UAO** shall indemnify, defend and hold harmless the **FDOT** and all of its officers, agents and employees from any claim, loss, damage, cost, charge or expense arising out of any acts, action, error, neglect or omission by the **UAO**, its agents, employees, or subcontractors during the performance of the Agreement, whether direct or indirect, and whether to any person or property to which **FDOT** or said parties may be subject, except that neither the **UAO**, its agents, employees or subcontractors will be liable under this section for

STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION  
**UTILITY MASTER AGREEMENT**  
(AT UAO AND FDOT EXPENSE COMBINED)

Form No. 710-010-20  
UTILITIES  
7/99

damages arising out of the injury or damage to persons or property directly caused by or resulting from the negligence of the FDOT or any of its officers agents or employees during the performance of this Agreement.

The UAO's obligation to indemnify, defend, and pay for the defense or at the FDOT's option, to participate and associate with the FDOT in the defense and trial of any damage claim or suit and any related settlement negotiations, shall arise within seven (7) days of receipt by the UAO of the FDOT's notice of claim for indemnification to the UAO. The notice of claim for indemnification shall be served by certified mail. The UAO's obligation to defend and indemnify within seven (7) days of such notice shall not be excused because of the UAO's inability to evaluate liability or because the UAO evaluates liability and determines the UAO is not liable or determines the FDOT is solely negligent. Only a final adjudication or judgment finding the FDOT solely negligent shall excuse performance of this provision by the UAO. The UAO shall pay all costs and fees related to this obligation and its enforcement by the FDOT. The FDOT's delay in notifying the UAO of a claim shall not release UAO of the above duty to defend.

**9. Force Majeure**

Neither the UAO nor the FDOT shall be liable to the other for any failure to perform under this Agreement to the extent such performance is prevented by an act of God, war, riots, natural catastrophe, or other event beyond the control of the non-performing party and which could not have been avoided or overcome by the exercise of due diligence; provided that the party claiming the excuse from performance has (a) promptly notified the other party of the occurrence and its estimate duration, (b) promptly remedied or mitigated the effect of the occurrence to the extent possible, and (c) resumed performance as soon as possible.

**10. Miscellaneous**

- a. If the Utility Work is reimbursable under this Agreement, the UAO shall fully comply with the provisions of Title VI of the Civil Rights Act of 1964 and any subsequent revisions thereto in connection with the Utility Work covered by this Agreement, and such compliance will be governed by one of the following methods as determined at the time of the issuance of the work order:
  - (1) The UAO will perform all or part of such Utility Work by

STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION  
**UTILITY MASTER AGREEMENT**  
(AT UAO AND FDOT EXPENSE COMBINED)

Form No. 710-010-20  
UTILITIES  
7/99

- a contractor paid under a contract let by the UAO, and the Appendix "A" of Assurances transmitted with the issued work order will be included in said contract let by the UAO.
- (2) The UAO will perform all of its Utility Work entirely with UAO's forces, and Appendix "A" of Assurances is not required.
  - (3) The Utility Work involved is agreed to by way of just compensation for the taking of the UAO's facilities on right-of-way in which the UAO holds a compensable interest, and Appendix "A" of Assurances is not required.
  - (4) The UAO will perform all such Utility Work entirely by continuing contract, which contract to perform all future Utility Work was executed with the UAO's contractor prior to August 3, 1965, and Appendix "A" of Assurances is not required.
- b. The Facilities shall at all times remain the property of and be properly protected and maintained by the UAO in accordance with the then current Utility Accommodation Manual and the current utility permit for the Facilities.
  - c. Pursuant to Section 287.058 of the Florida Statutes, the FDOT may unilaterally cancel this Agreement for refusal by the UAO to allow public access to all documents, papers, letters, or other material subject to the provisions of Chapter 119, Florida Statutes, and made or received by the UAO in conjunction with this Agreement.
  - d. This Agreement constitutes the complete and final expression of the parties with respect to the subject matter hereof and supersedes all prior agreements, understandings, or negotiations with respect thereto, except that the parties understand and agree that the FDOT has manuals and written policies and procedures which shall be applicable at the time of the Project and the relocation of the Facilities and except that the UAO and the FDOT may have entered into joint agreements for Utility Work to be performed by FDOT'S highway contractor. To the extent that such a joint agreement exists, this Agreement shall not apply to Facilities covered by the joint

STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION  
**UTILITY MASTER AGREEMENT**  
(AT UAO AND FDOT EXPENSE COMBINED)

Form No. 710-010-20  
UTILITIES  
7/99

agreement. Copies of FDOT manuals, policies, and procedures will be provided to the UAO upon request.

- e. This Agreement shall be governed by the laws of the State of Florida. Any provision hereof found to be unlawful or unenforceable shall be severable and shall not affect the validity of the remaining portions hereof.
- f. Time is of essence in the performance of all obligations under this Agreement.
- g. All notices required pursuant to the terms hereof may be sent by first class United States Mail, facsimile transmission, hand delivery, or express mail and shall be deemed to have been received by the end of five business days from the proper sending thereof unless proof of prior actual receipt is provided. The UAO shall have a continuing obligation to notify each District of the FDOT of the appropriate persons for notices to be sent pursuant to this Agreement. Unless otherwise notified in writing, notices shall be sent to the following addresses:

If to the UAO:

John McClellan, President  
FEC Telecom, Inc.  
37 North Orange Ave., Suite 500  
Orlando, FL 32801

If to the FDOT:

Florida Department of Transportation  
Roadway Design / Office of Utilities  
605 Suwannee Street, MS 32  
Tallahassee, Florida 32399-0450

## 11. Certification

This document is a printout of an FDOT form maintained in an electronic format and all revisions thereto by the UAO in the form of additions, deletions or substitutions are reflected only in an Appendix entitled "Changes To Form

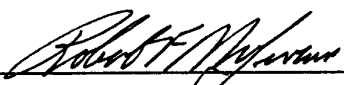
STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION  
**UTILITY MASTER AGREEMENT**  
(AT UAO AND FDOT EXPENSE COMBINED)

Form No. 710-010-20  
UTILITIES  
7/99

Document" and no change is made in the text of the document itself. Hand notations on affected portions of this document may refer to changes reflected in the above-named Appendix but are for reference purposes only and do not change the terms of the document. By signing this document, the UAO hereby represents that no change has been made to the text of this document except through the terms of the Appendix entitled "Changes To Form Document."

IN WITNESS WHEREOF, the parties hereto have executed this Agreement effective the day and year first written.

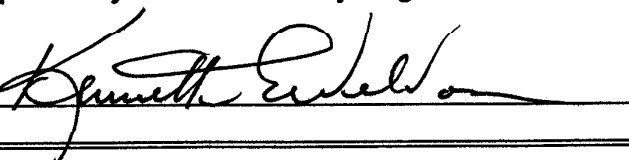
UTILITY: FEC Telecom, Inc.

BY: (Signature)   
(Typed Name: Robert F. MacSwain)  
(Typed Title: Vice President)

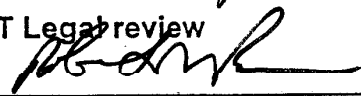
DATE: 9/7/99

---

Recommend Approval by the State Utility Engineer

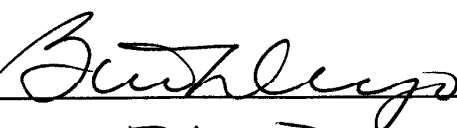
BY: (Signature) 

DATE: 11/1/99

FDOT Legal review  
 10/26/99

---

STATE OF FLORIDA  
DEPARTMENT OF TRANSPORTATION

BY: (Signature)   
(Typed Name: Bill Devo  
State Highway Engineer)

DATE: 11/1/99



STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION  
**UTILITY MASTER AGREEMENT**  
(AT UAO AND FDOT EXPENSE COMBINED)

Form No. 710-010-20  
UTILITIES  
7/99

(Typed Title: \_\_\_\_\_)

---

---

FEDERAL HIGHWAY ADMINISTRATION (if applicable)

BY: \_\_\_\_\_

DATE: \_\_\_\_\_

(Typed Name: \_\_\_\_\_)

(Typed Title: \_\_\_\_\_)