

DUCT USAGE AGREEMENT

THIS DUCT USAGE AGREEMENT ("Agreement") is entered into as of the 19th day of April 2010 by and between Bresnan Communication, Inc. ("Bresnan") and The City of Grand Junction ("City"), for the licensing of certain property interests as designated in the appended Duct Usage Application ("DUA") to this Duct Usage Agreement pursuant to the following terms:

RECITALS

WHEREAS, City of Grand Junction owns conduit ("Duct") for providing fiber optic cable for traffic signal communication within the City of Grand Junction, AND;

WHEREAS, Bresnan wishes to lease from the City on a non-exclusive basis certain portions of the Duct for the purpose of crossing the Riverside Parkway Railroad Overpass Bridge with fiber optic cable, AND;

WHEREAS, the City is willing to permit the location of Bresnan fiber optic cable in the Duct for the purposes of providing communications services throughout the City;

NOW THEREFORE, in consideration of the mutual covenants contained in this Agreement and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. USE.

- 1.1 Use of Duct. The use of the City Duct, at the location(s) specified herein which, upon application, may be given to Bresnan under this license, is for the location of fiber optic cable, to allow for the provision of communications services to Bresnan customers.
- 1.2 Duct Use Application (DUA). Bresnan shall prepare a DUA on the form marked Exhibit A, attached hereto, and made a part hereof, when applying for permission to make use of any Duct owned by the City. A DUA is intended to provide the City with information necessary for a technical review prior to permitting Bresnan access to the Duct. A DUA shall include the specifications for the equipment Bresnan is requesting to locate, a map showing the location of the Duct Bresnan desires to use and proposed entry and exit methods to the Duct(s). The DUA shall also include any additional information the City may reasonably require. Bresnan shall be responsible for all costs and expenses associated any make-ready costs that may be necessary to allow for the Duct usage. Bresnan shall not install any equipment lines, cable or fiber in any Duct without the prior written approval of the City.

- 1.3 Installation, Construction, Improvements, Maintenance, and Repairs. Upon written receipt of an approved DUA, Bresnan may install its equipment as described in the DUA. Bresnan's equipment shall be installed, maintained and removed in accordance with the requirements and specifications of the City, the National Electric Safety Code, current edition, or any revisions thereof, and other generally applicable engineering standards and in compliance with any applicable rules, regulations or orders now in effect or hereafter issued by any federal or state commission or any other public authority, including the City, having jurisdiction.
- 1.4 Operation. Bresnan must, at Bresnan's sole expense, comply with all laws, orders, ordinances, regulations and directives of applicable federal, state, county, and municipal authorities or regulatory agencies, including, but not limited to, the Federal Communications Commission ("FCC"), the Federal Energy Regulatory Commission ("FERC"), the Occupational Safety and Health Administration ("OSHA"), the National Electric Safety Code ("NESC") and the National Electrical Code ("NEC"), as they relate to the operation of Bresnan's equipment and the use of the City's Duct(s).
- 1.5 No Modification. Bresnan shall not modify or change the position of its equipment or place any additional equipment in the Duct, except with the express written consent of City.
- 1.6 Removal. Bresnan may at any time remove its equipment from Duct for which it has an approved DUA. Prior notification to the City must be provided and any and all applicable permits for work in the Right of Way must be obtained.
- 1.7 Subordination. Nothing in this Agreement shall be construed to in any way deny, prohibit or interfere with the City's rights and ability to utilize its Ducts. All rights of Bresnan hereunder are subject and subordinate to the City's rights to utilize its Ducts. If at any time the City determines that a Duct occupied by Bresnan equipment is required for the sole use of the City or is no longer suitable for installation of Bresnan's equipment because of safety or other considerations, Bresnan must, at Bresnan's expense, comply with orders from the City to rearrange, remove, or transfer its equipment at Bresnan's sole expense. Failure to comply within 30 days may result in either rearrangement, removal, or transferring of Bresnan's equipment by the City at Bresnan's sole expense.
- 1.8 Identification Tags. Bresnan must attach to its equipment, at each and every attachment, an identification tag meeting specifications determined by the City.

2. **TERM.** The initial term of this Agreement and all DUA's made a part hereof shall be for one year commencing on the date of this Agreement and shall be automatically renewed for one (1) year terms thereafter unless either party provides the other with written notice of non-renewal not less than ninety (90) days prior to the expiration of the initial term or any renewal term thereafter, unless otherwise terminated in accordance with this Agreement.

4. **TERMINATION.** The City has the right to terminate all of Bresnan's rights to the Ducts licensed upon sixty (60) days prior written notice to Bresnan if the City determines to abandon the Duct, or if any equipment placed in the Duct by Bresnan unreasonably interferes with the City's ability to improve, modify or reconfigure its fiber optic system and Bresnan fails to resolve such interference within a reasonable time after receiving written notice. Notwithstanding the above, nothing herein contained shall be construed to compel the City to maintain any of its Ducts for a period longer than demanded by its own service requirements. In addition to the termination rights listed above, the City may also terminate all of Bresnan's equipment if Bresnan fails to pay any fee or other sums payable by Bresnan within thirty (30) business days of City's receipt of written request for payment; or if Bresnan's equipment is maintained or used in violation of any law, regulation, ordinance, safety or engineering standard or other legal requirement, and, if Bresnan fails to bring its equipment into compliance with such law, regulation, ordinance, safety or engineering standard or other legal requirement within 30 days of receipt of actual notice of violation.

5. **FEES.** There will be no rental fee for the use of the Duct(s) described in the appended Duct Use Application(s), is \$10.00 per year.

6. **INSURANCE.** Bresnan shall maintain commercial general liability insurance insuring Bresnan against liability for personal injury, death or damage to personal property arising out of use of the Duct by Bresnan or its employees, its agents or Licenses, with combined single limits of not less than Two Million Dollars (\$2,000,000). Bresnan shall also maintain fire and extended coverage insurance insuring Bresnan's personal property for its full insurable value (subject to reasonable deductibles). Bresnan shall provide Licensor a certificate of insurance of such policy or policies at the time of execution of this Agreement and shall continue to provide renewal certificates as they occur.

7. **INDEMNIFICATION.** Bresnan shall indemnify the City and save it harmless from and against any and all costs, (including reasonable attorney's fees and expenses), claims, actions, damages, liability and expense in connection with the loss of life, personal injury, and/or damage to property arising from or out of any occurrence in, upon or at the Duct caused by the fault, including negligence, of Bresnan or Bresnan's employees or agents, except to the extent caused by the negligence or willful misconduct of the City's agents or employees. The City reserves the right to maintain any Duct it owns and to operate its facilities in said Ducts in such manner as will best enable the City to fulfill its service requirements. The City shall not be liable to Bresnan for any interference with the operation of Bresnan's equipment arising in any manner out of the use of such Ducts hereunder, except for the City's negligence or willful misconduct. The City intends to exercise reasonable care to avoid causing damage to Bresnan's equipment and, in the event of such damage, the City shall immediately report its occurrence to Bresnan.

8. **ASSIGNMENT.** Bresnan has no right to assign, sublet, or otherwise transfer this Agreement, or the rights arising out of or under it, either in whole or in part, to any entity without the prior written consent of the City.

9. **AGREEMENT.** This Agreement and each DUA constitutes the entire agreement and understanding between the Parties, and supersedes all offers, negotiations and other agreements concerning the subject matter contained in this Agreement. There are no representations or understandings of any kind not set forth in this Agreement. Any amendments to this Agreement or any DUA must be in writing and executed by both parties.

10. **NOTICE.** Any notice or demand required to be given in this Agreement shall be made by certified or registered mail, return receipt requested or reliable overnight courier to the address of other parties set forth below:

City of Grand Junction: Jody Kliska, Transportation Engineer
333 West Avenue, Building D
Grand Junction, CO 81501

cc: John Shaver, City Attorney
250 N. 5th Street
Grand Junction, CO 81501

Bresnan:

Scott Wright - Project Manager
Bresnan Communications
2502 Foresight Cir
Grand Junction, CO 81505

cc: Jeff Valdez Construction Sup.
Bresnan Communications
2502 Foresight Cir
Grand Junction, CO 81505

Any such notice is deemed received one (1) business day following deposit with a reliable overnight courier or five (5) business days following deposit in the United States mails addressed as required above. City of Grand Junction or Bresnan may from time to time designate any other address for this purpose notice to the other party.

13. **GOVERNING LAW.** This Agreement and each DUA is governed by the laws of the City of Grand Junction.

14. **NOT A JOINT VENTURE.** Neither this Agreement nor any DUA establishes and shall not be construed to establish or create a partnership, joint venture, or other form of business association between City of Grand Junction and Bresnan.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first above written.

CITY

By: [Signature]
Name: LAURIE M. KADRICH
Title: CITY MANAGER

BRESNAN

By: [Signature]
Name: Scott P. Wright
Title: Project Manager

DUCT USAGE AGREEMENT
EXHIBIT A
DUCT USAGE APPLICATION

This Duct Usage Application (DUA) is made to the Duct Usage Agreement between the City of Grand Junction, CO and Bresnan Communications, dated January 26, 2010. Permission granted by approval of this DUA shall be subject to all the terms and conditions thereof.

Application is hereby made to: Install 600' LF of Fiber Optic Cable.
 Remove _____.

In the area of Riverside Parkway 5th Street Overpass, Street Name Riverside Parkway Between 4th Street and 5th Street, as more particularly described in the location of Duct usage sketch (map) attached hereto as Exhibit "A" and made a part thereof.

BRESNAN

CITY OF GRAND JUNCTION, CO

Approved
Denied

Submitted by: Scott Wright

Title: Project Manager

Telephone #: 970-263-2313

Date: 1/26/10

By: Jody Kliska

Title: Transportation Engineer

Date: January 26, 2010

Modifications Necessary to Accommodate Bresnan

Bresnan to provide before and after testing of City existing fiber. Bresnan to provide the necessary entry/exit from City Conduit to Bresnan Conduit at termination points.

Rearrangement or Replacement of City of Grand Junction's existing facilities is necessary to accommodate Bresnan as indicated on attached sketch.

Estimated Cost \$ _____ WO # _____

Engineered by: _____

Approved by:

Jody K. Kliska

Title: Transportation Engineer

Date: January 26, 2010