



**CITY OF GRAND JUNCTION**

CITY COUNCIL AGENDA									
Subject		Update on Cable TV Discussions w/Bresnan Communications							
Meeting Date		5 January 2004							
Date Prepared		26 December 2003							
Author		David Varley	Assistant City Manager						
Presenter Name		Bresnan Representatives, David Varley, John Shaver, Fred Stroh							
Report results back to Council		<input type="checkbox"/>	No	<input checked="" type="checkbox"/>	Yes	When			
Citizen Presentation		<input checked="" type="checkbox"/>	Yes	<input type="checkbox"/>	No	Name Bresnan Representatives			
<input checked="" type="checkbox"/>	Lunch Workshop	<input type="checkbox"/>	Formal Agenda			<input type="checkbox"/>	Consent	<input type="checkbox"/>	Individual Consideration

**Summary:** In August City Council met with representatives of Bresnan Communications to discuss the option of negotiating a cable TV franchise agreement. It was discussed that Bresnan would be willing to work with the City to provide additional desired services through another avenue instead of a formal franchise. Council directed staff to meet with Bresnan, discuss possible options for services and report back to City Council on the proposal offered by Bresnan. Since August, staff has met with Bresnan on several occasions to discuss these issues. City staff that has met with Bresnan includes John Shaver (City Attorney's Office), Fred Stroh (Information Systems), Jody Kliska (Traffic Engineering), Seth Hoffman and David Varley (City Manager's Office).

**Budget:** No budget impact until/unless the City proceeds with additional services from Bresnan Communications.

**Action Requested/Recommendation:** Request Council direction on how to proceed with the issue of additional cable services in the form of an agreement or formal franchise negotiations.

**Attachments:** 1) Summary memo from David Varley 2) Draft proposal from Bresnan Communications

**Background Information:** The City has never had a formal franchise agreement with the local cable TV provider. The cable company operates under a revocable permit authorized by the voters in 1966. Over the years the City has discussed the option of a franchise agreement. Much of this discussion has revolved around securing a permanent or future guarantee that the City will be able to continue broadcasting its meetings over the local cable network. Currently, the City broadcasts over the channel that is provided to Mesa County under its cable agreement. There has also been discussion about obtaining additional services from the local cable company.

**To:** Mayor & City Council

<b>From:</b>	David Varley, ACM
<b>CC:</b>	Kelly Arnold, City Manager
<b>Date:</b>	26 December 2003

**Re:** Cable TV Discussions with Bresnan Communications, Update for City Council Workshop on 5 January 2004

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Bresnan Communications, the cable television provider in Grand Junction has expressed an interest in being recognized as the successor to a revocable permit that was first approved by the voters in 1966. Over the years the City has discussed whether or not to negotiate a franchise agreement with the local cable TV operator or to continue under the existing permit.

In August 2003, the City Council met with representatives of Bresnan Communications to discuss this issue. At that meeting representatives of Bresnan stated that they would prefer to work with the City on a basis less formal than a franchise. They believed they could satisfy the City's needs without going through a formal franchise process. City Council instructed staff to work with Bresnan to see what changes could be made and what additional agreements or services could be provided. After working with Bresnan, these issues were to be brought back to the Council for discussion and a possible decision regarding the need/desire for a franchise development process.

Staff has met with Bresnan on several occasions and the attached report summarizes Bresnan's current offer to the City. Basically, these services are the same ones that Bresnan states they provide to other cities with which they have a franchise agreement.

If Council chooses to proceed with Bresnan's offer then the details of an agreement would need to be worked out. Such details would include items such as the form of agreement for providing a dedicated City channel in the future and the exact locations (City buildings) where a high speed network would be installed.

Bresnan has offered a TV channel dedicated to the City of Grand Junction for its use. However, the channel would only be available on future conditions. Currently, the City uses the channel that is provided to Mesa County under its agreement with Bresnan. The City uses that channel to broadcast City Council and Planning Commission meetings. Bresnan is proposing to provide a channel for the City when the current channel reaches a certain level of use. Under such an arrangement the City would be guaranteed the ability to continue broadcasting its meetings and would be able to increase its use of TV programming. We need to make sure the channel that would be provided would be contained in the "basic" package of cable TV options. This would ensure that the greatest number of subscribers would have access to this channel.

The second component of Bresnan's offer is a high speed wide area network (WAN) that would connect City buildings with fiber optic cable. The proposal would consist of an Ethernet port at each location providing up to 100 Mb of data throughput on a shared Ethernet domain between all locations. In other words, City buildings would be connected by Bresnan fiber optic and this would greatly increase the speed and ease of data transfer between City Hall and outlying locations such as the Parks Office and the Fire Stations. Installation for this network is proposed at \$2,000 per site which is a 50% discount from Bresnan's regular price. Installation includes a router at each location so the additional cost to the City to hook up and begin using the service would be very minimal. The monthly cost for each location would be \$845 which is 65% of the standard price and is the same discount that is provided to Mesa County in their agreement with Bresnan. The City currently pays approximately \$220 per month for each T1 line to each location. These T1 lines are much slower than fiber optic cable and are quite burdensome for some of our heavy data users. The proposal calls for a ten year agreement for this service at the discounted price. Under current law the agreement would have to be subject to annual appropriation and renewal.

If we proceed with this proposal the exact locations for the service would need to be determined. The City currently has some buildings already connected by fiber cable and many more are scheduled to be connected as part of our traffic signal project. The traffic signal project has a ten year completion time and State funding to continue with this project is quite uncertain right now. Buildings that will be connected with fiber during the first quarter of 2004 under the traffic project include City Hall, City Shops, Mesa Mall Substation, Fire Station #1, the Police Department and Two Rivers Convention Center. There will also be a dedicated line between the Police Department and the Sheriff's Office. Fire Stations #2 and #3 are budgeted to be connected in 2005.

While Bresnan would like ten years to recover their capital costs, it may not make as much sense for the City. If the traffic signal project receives funds in the future then additional City buildings would be connected under that project. It would then not be necessary to pay Bresnan for fiber optic service to these buildings and we would want to drop them from the agreement to save money.

Regional and local representatives of Bresnan will be present at the 5 January 2004 workshop to discuss their proposal and listen to Council discussion and direction.



3 DEC 2007 DT

**ADDENDUM TO REVOKABLE PERMIT 914156**

**CITY OF GRAND JUNCTION, COLORADO**

**AN ADDENDUM GRANTING THE CITY OF GRAND JUNCTION ONE  
GOVERNMENT ACCESS CHANNEL ON THE BRESNAN  
COMMUNICATIONS, LLC, CABLE TELEVISION SYSTEM**

WHEREAS, by Revokable Permit No. 914156 dated March 17, 1966, the City of Grand Junction granted a Permit to construct, operate, and maintain a cable television system to Wentronics, Inc., and

WHEREAS, the Permit was subsequently transferred to Bresnan Communications, LLC, (hereinafter referred to as "Grantee"), who is the current operator of the cable system in the City of Grand Junction, and

WHEREAS, the City of Grand Junction currently shares a government access channel with the County of Mesa on the Grantee's cable system, and

WHEREAS, the City of Grand Junction requires its own government access channel when the current channel used meets capacity or should Mesa County no longer allow the City use of said channel.

NEEDS TO  
BE IN  
PASC PACKAGE

NOW, THEREFORE, BE IT ORDAINED by the Council of the City of Grand Junction of the State of Colorado:

The Grantee shall provide one channel for City government access, at such time as the current channel shared with Mesa County is utilized seventy-five percent (75%) of the time from 11:00 a.m. to 10:00 p.m. Monday through Saturday for six (6) weeks with initial run and first and second rerun non-character generated original programming, or Mesa County no longer allows the City use of said channel. The channel shall be promoted and administered by the City or its designee, pursuant to the provisions of the Cable Act Section 611 (47 U.S.C. section 531). The City shall be responsible for all programming requirements, including but not limited to scheduling, playback, training, staffing, copyright clearances, and equipment, maintenance and repair.

\* → Grantee reserves the right to program the government access channel during hours not used by the City or its designee.

Considered and approved this day of \_\_\_\_\_

City of Grand Junction

Signature: \_\_\_\_\_

Name/Title: \_\_\_\_\_

Bresnan Communications, LLC

Signature: \_\_\_\_\_

Name/Title: \_\_\_\_\_

3 DEC-2003 DA

*CITY OF GRAND JUNCTION*

*HIGH SPEED  
WIDE AREA NETWORK*

December 2, 2003

Submitted By:  
Bresnan Communications  
John Gibbs  
Office 307-421-5822  
[jgibbs@bresnan.com](mailto:jgibbs@bresnan.com)

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## Section 1 - Executive Summary

Bresnan is pleased to propose the design, installation and maintenance of a state-of-the-art, high-speed, wide-area, data network for the City of Grand Junction ("City"). Bresnan's proposed design will provide the City with a private network that will initially be utilized to connect three key locations with Fiber within the City.

Bresnan is a pioneer and leader in High-Speed Data and Distance Learning technology. We currently operate multiple high-speed data networks in Montana, Wyoming, Colorado, and Utah representing a multi-million dollar commitment to advanced interactive video and high-speed data services across the Mountain States region.

Bresnan's proposed high-speed data network will initially be used to connect six of the Cities locations, and have the flexibility to increase the number of sites and expand the amount of bandwidth to any location. By utilizing fully routed high-speed data network electronics and an extensive fiber network that will be deployed throughout the City, the wide area network is capable of data transmission speeds of one gigabit per second. Bresnan's network design will provide the City of Grand Junction with one of the most powerful and cost effective means of data transmission available today.

Upon acceptance of the proposal, Bresnan is prepared to promptly complete all aspects of construction and to activate service to all of the proposed sites on the project.

Please feel free to contact Mr. John Gibbs, Regional General Manager, at (307) 421-8255, if you have any questions or require additional information regarding this proposal.

THIS PROPOSAL IS ~~THE~~ ~~WHAT~~ OTHER  
CITIES OR FRANCHISES GET.

## **Section 2 - Bresnan Communications Company**

Bresnan Communications commenced its operations in 1984 with the purchase of five cable systems located in the Upper Peninsula of Michigan. Over the next 14 years, Bresnan grew quickly with further acquisitions in the states of Michigan, Minnesota, Wisconsin, Mississippi and Georgia in the U.S. and subsequent acquisitions in both Chile and Poland. Today, the Company operates in Colorado, Montana, Wyoming and Utah.

Bresnan always reaches beyond cable's traditional residential customer. We were an early entrant into the field of high-speed data communications for business, education, government and other institutions. Using customized applications, Bresnan has created virtual private networks, local area networks ("LANs"), wide area networks ("WANs"), and other point-to-point interconnections for communications. These networks, run on Bresnan's broadband plant, have created secure and dedicated lines that carried signals to specially designated locations. These technologies are especially needed in many rural communities, where applications such as telemedicine, distance learning, telecommuting and video conferencing can provide a seamless connection to the rest of the world.

Following are in-depth descriptions of our past operations:

### **Bresnan in the United States**

With the initial purchase of five cable systems in 1984, Bresnan began to dramatically improve the telecommunications capabilities of citizens in the Upper Peninsula of Michigan. Over the next 14 years, we grew quickly with further acquisitions in the states of Michigan, Minnesota, Wisconsin, Mississippi and Georgia. Our company upgraded many of those systems, enabling us to introduce high-speed Internet access in the Upper Peninsula of Michigan in the summer of 1997, making Bresnan customers among the first in the country to experience this new technology.

In 1998, we decided to consolidate our operations in the Midwest. After selling our Southeast operations, we began to acquire strategically clustered systems in small and medium-sized communities throughout the Midwest, with a plan to upgrade the vast majority of those systems and rapidly launch new broadband services, including high-speed Internet service. Ultimately, the majority of our systems were interconnected, thus creating the economies of scale needed to offer advanced programming and data network options at attractive prices. This also facilitated the exchange of voice, video, and data traffic among businesses and institutions in the area.

Bresnan has also made a multi-million dollar commitment to education through the creation of broadband networks capable of providing a full range of voice, video and data services. We were pioneers in the development and construction of interactive television

networks for distance learning. We completed 19 networks that connected almost 200 educational sites, offering various combinations of voice, data and interactive television networks.

In February 2000, Bresnan completed the sale of all of its U.S. operations to Charter Communications, now the fourth largest cable operator in the United States. In March 2003, Bresnan reentered the cable market with the acquisition of some 314,000 customers in Colorado, Montana, Wyoming and Utah.

### Examples of Advanced Services

Bresnan has blazed new paths using technological platforms that deliver a full array of high-bandwidth, high-speed broadband products. Following are just a few examples of Bresnan's cutting-edge technology applications:

- **Voice and High-Speed Data Services - Delta College (Bay City, MI):** We provided Delta College with two-way voice and data communications services. Delta College also had full voice and data connections with its Delta City Planetarium and Learning Center, allowing the college to provide distance learning classes and other broadband services to the Bay/Arenac Intermediate School District. Through the network, all campuses were accessible through the college's PBX system and four-digit extensions.
- **Wide Area Network - City of Superior, WI:** In March 1998, we completed a high-speed data network linking municipal offices and the local library in the city of Superior, thus creating a more efficient way for Superior to conduct business and provide services to its residents. This network, operating at rates of up to ten megabits-per-second, utilized state-of-the-art cable modems which enabled the city to transmit and receive data between these locations at speeds hundreds of times faster than traditional 28.8 telephone modems. *SIMILAR TO WHAT G.I. COULD GET*
- **Virtual Private Network - Superior Behavioral Health Network (MI):** In March 1998, we completed construction of a virtual private network for high-speed data communications among three locations for Superior Behavioral Health in the Upper Peninsula of Michigan. The network effectively functioned as a private data line within our cable television network. This created discreet, secure, dedicated lines within our existing broadband plant, which carried separate signals to specially designated locations. Superior Behavioral Health used this virtual private network for data transmission between sites, enabling the sharing of files and administrative materials. *MULTI-SITE LARGE SCALE*

- **Interactive Television Network - Delta-Schoolcraft Intermediate School District (Escanaba, MI):** Using our network, a teacher in one school could simultaneously lead fully interactive, real-time classes in at least four schools. In addition, educators used interactive television to conduct professional development courses for other teachers in numerous remote locations. With a hub site at the intermediate school district's Escanaba office, this interactive television project featured 92 miles of fiber optic cable and linked Bay de Noc Community College with ten other schools.

#### **Other Major Bresnan Projects**

1. Bresnan designed, built, implemented and managed for the Mayo Clinic in Rochester Minnesota a multi site Wide Area Network utilizing fiber to reach offices and clinics. Additionally Mayo utilized Bresnan for a large scale VPN offering to improve the quality of life for both residence of Rochester who needed medical care, and for the doctors who needed to work from home.
2. Bresnan designed and implemented a large scale VPN network for IBM's 5<sup>th</sup> largest facility in the world. IBM chose Bresnan as provider in part because we could reach cost effectively the majority of the 13,000 employees who work at the Rochester Facility. This initial deployment led to a number of additional solutions IBM needed including, direct fiber access to Internet, redundant facilities into location for Qwest backup.



## **Section 3 - Network Design and System Overview**

### **Network Design and System Overview**

Bresnan Communications is upgrading its network in Grand Junction, Colorado to create a Metropolitan Access Network capable of offering various Advanced Services. This network will allow Bresnan Communications to offer the full array of advanced services to business and residential customers, including high speed internet, point to point and Metropolitan LAN services, video on demand as well as telephony. Our continued vision and experience is to build high availability networks, which results in improved quality for our customers.

Bresnan Communications plans to build dedicated strands of single-mode fiber from its head end (aka POP) facility to each of the City of Grand Junction locations described in this proposal. Fiber access equipment will be installed at each site and a proper point of demarcation will be provided for each type of service.

### **Network Design Details**

The following describes in more detail, the services proposed in Figure A below.

#### Shared 100Mb or 1000Mb Ethernet

- There will be a Ethernet port at each of the six locations (Fire Stations 2-4, Water Treatment, City Park, and City Hall) providing up to 100Mb of data throughput on a shared Ethernet domain between all locations.

Figure A provides a single line diagram showing the connectivity between all locations in the shared Ethernet domain at speeds capable of up to 100Mb or 1000Mb.

Figure A – Logical Network Diagram

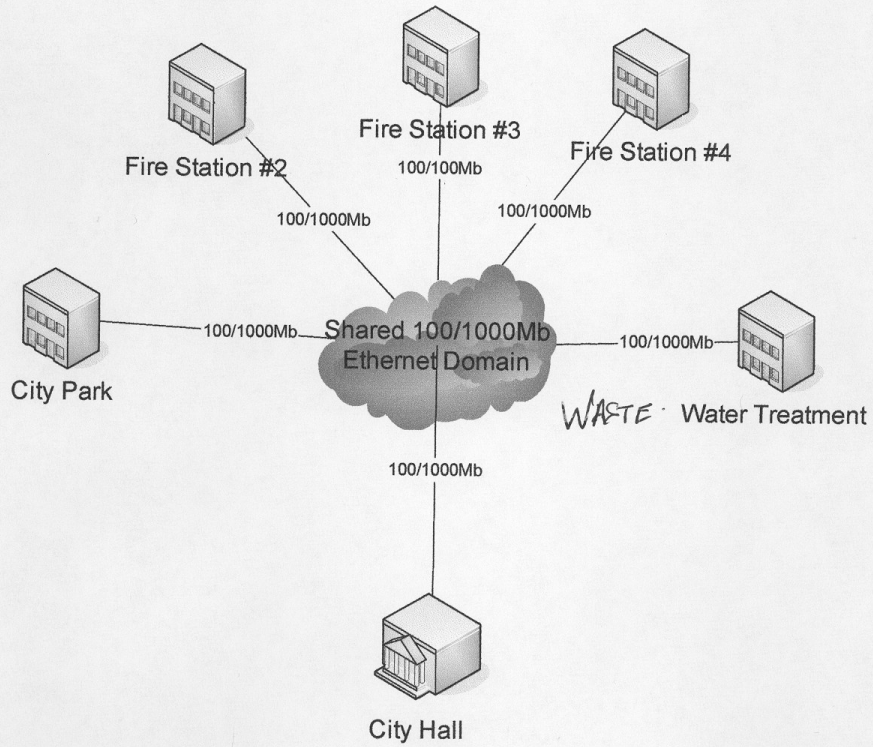
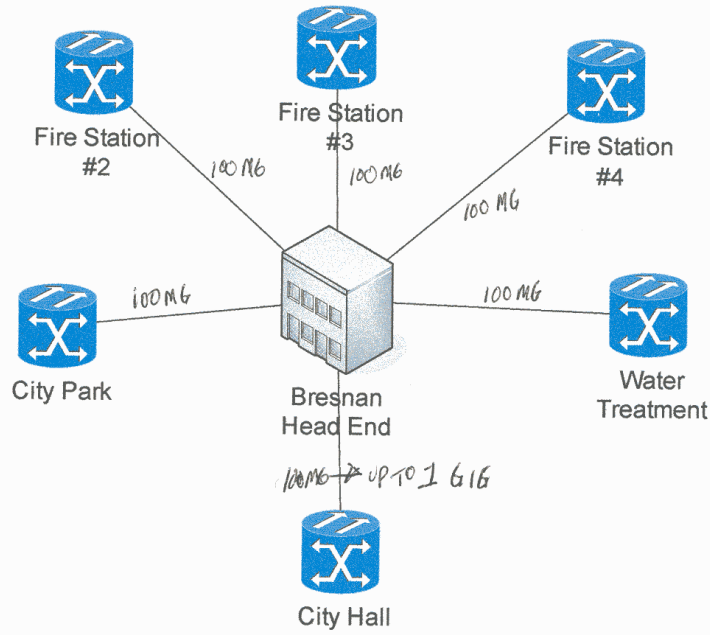


Figure B provides a single line diagram showing fiber routing between all end points and the Bresnan Head End. All facilities will consist of single mode fiber owned by Bresnan Communications.

Figure B – Physical Network Diagram



**Section 4 - Pricing**

Bresnan has developed a cost-effective solution for the City of Grand Junction that is significantly discounted from our standard commercial pricing. These proposed pricing options give the City maximum flexibility in meeting its capital and expense budgets.

The pricing assumes the City of Grand Junction will be responsible to purchase and operate all necessary network electronics to run the data network beyond Bresnan's point of demarcation. Bresnan will supply each location with a fiber edge device designed to grow with the evolving needs of the city.

Maintenance on the network connection and customer premise equipment is included in the monthly service charge. Diagnostic guides for the hardware will be provided.

All prices are valid for 60 days:

High Speed Wide Area Network -(120) Month Agreement

- Commercial Pricing \$ 2,500/month per site
- Special Government Monthly Price: \$1,300/ month per site
- Agreement to offer services at 65% \$ 845/month per site
- Installation fee: \$2,000.00 per site

*- SIMILAR TO MESA CO'S AGREEMENT*

*10 YEAR TERM PROPOSED*

*TOTAL ≈ COST FOR 3+ T.1 LINES*

Location	Ethernet	TDM
Fire Station 2	100 Mb	N/A
Fire station 3	100 Mb	N/A
Fire Station 4	100 Mb	N/A
City Hall - Current County shared location	100 Mb	N/A
Water treatment plant	100 Mb	N/A
City Park	100 Mb	N/A

*INSTALLATION = \$2,000 PER SITE WHICH ≈ 50% DISCOUNT*

**Bresnan VPN**

WOULD NEVER GO OUT TO THE INTERNET  
COULD WORK @ HOME USING THIS

BUT COULD STILL  
CONNECT TO  
CITY HALL

Bresnan VPN – Bresnan can provide VPN services for the City of Grand Junction employees who require access to city network from Home. The Bresnan VPN utilizes the local plant to keep VPN traffic local to Grand Junction without sending data to the Internet. Data moves from Users home, across fiber/coax plant. Data is cross-connected at Bresnan Head-End ( POP ) and sent across fiber to the City of Grand Junction VPN concentrator. Bresnan acts as transport and does not support IP SEC or VPN hardware.

Pricing for VPN users is \$ 10.00 + Residential cable modem fee. Bresnan system will allow users to go out to Internet or cross connect to City of Grand Network.

Bresnan believes its wide area network will provide the City of Grand Junction with the most advanced facilities available today at a very affordable price. Bresnan can provide additional payment options if the City desires. The pricing above does not include applicable franchise fees and taxes.

If this proposal leads to a contract between Bresnan and the City of Grand Junction, we will work with you to incorporate mutually agreeable acceptance criteria into the contract.

No restrictions apply to the City of Grand Junction's use of the network; however, we request that the network only be used to meet the City's internal telecommunications requirements. Resale or allowing third parties access to network would not be permitted.



## **Section 5 - Installation Plan**

Upon acceptance of the proposal, Bresnan is prepared to work with the City of Grand Junction on an installation plan. We will promptly complete all aspects of construction and activate service to all of the proposed sites on the project by the predetermined turn-up date agreed upon by the City and Bresnan. Bresnan will work with the City of Grand Junction to establish a mutually agreeable installation time frame.

## **Section 6 – System Benefits**

### **High Bandwidth Solution**

Bresnan's network architecture provides the City of Grand Junction with an extremely high bandwidth and cost effective solution for its data needs. The network is engineered and configured to deliver high quality data services at a cost effective price. Bresnan's proposed network provides growth up to Gigabit of data transmission per site. As per our discussions, we feel this proposed architecture and speed will provide the cities data needs well into the future.

### **Flexible Network Design**

The network design is also extremely flexible. It will enable the City to add new sites, new applications, and increase speeds at each location. Should the city require, Bresnan has the ability to increase data throughput beyond the initial 100 Mbps design. Bresnan's high-speed data solution is fast, effective, and easy-to-use. The system is also continuous, providing full-time, unlimited connectivity throughout the system.

### **Compatible with Other Networks**

Bresnan's system can be SONET/Fiber based, which is fully compatible with other transmission mediums. Through the use of interconnection agreements and electronics, seamless connectivity to other networks can be realized. Bresnan has proposed a 100 Mbps fiber based network. Bresnan can swap electronics to offer a combination TDM/IP based solution.

### **Responsiveness to Needs of the City**

Bresnan's network is engineered for reliability and monitored 24x7 by our Network Operation Center. We have local field technicians and a local Network Administrator to further support the Grand Junction network. In addition, the City of Grand Junction will have a Bresnan Account Representative dedicated to it for on-going account support and the introduction of new Bresnan services.

## **Section 7 - Maintenance Plan**

### **Maintenance Policy**

Bresnan understands that our ability to maintain the system is a key factor in the evaluation process. Bresnan will provide personnel, test equipment and replacement parts to maintain the system over the life of the contract.

Our technical staff consists of local Grand Junction residents. Most of our technical staff are certified and have extensive video and data network maintenance experience. Bresnan has a significant presence in the Grand Junction area, with local-based technicians that can be dispatched to promptly repair and address any network troubles or outages. Area technicians are available for dispatch 24 hours a day, seven days a week.

The benefits of our local presence, our experience in fiber deployment coupled with our knowledge of data networks, will enable Bresnan to meet and exceed the availability and reliability objectives requested by the City of Grand Junction.

### **Equipment Maintenance**

Bresnan's pricing includes maintenance of all hardware supplied by Bresnan. Maintenance on equipment is available for the life of the contract. Bresnan will have in-house inventories and access to replacement equipment in regional service centers to quickly replace any defective parts. Bresnan is responsible for maintaining the transmission facilities of our network.



ADMINISTRATION

MEMORANDUM

TO: GRAND JUNCTION CITY COUNCIL  
FROM: KELLY ARNOLD, CITY MANAGER  
DATE: DECEMBER 29, 2003  
RE: FURTHER DISCUSISON OF RESOLUTION 75-02

Recently a couple of Council members have requested that a brief discussion be held on Resolution 75-02 which regulates the use of City Hall property for use other than governmental purposes. This has been scheduled for the January 5<sup>th</sup> lunch work session time immediately after the cable television discussion.

When Resolution 75-02 was adopted by Council it was primarily for the purposes of not allowing any non-government sponsored event in and around the Cornerstones of Law and Liberty that had been recently constructed. There was some minimal discussion about allowing some public events in other areas on City Hall property, but it was dismissed quickly for various reasons. Now a couple of Council members have expressed the interest in the possibility of using other areas of City Hall property while still keeping the Cornerstones of Law and Liberty area non-accessible.

If Council wants to allow some sort of area for non-government sponsored events, then the three most important considerations, from my perspective, are:

- 1) Space size while maintaining access to City Hall. The plaza area at the front doors of City Hall could work, but there would probably need some clear delineation on the plaza concrete of the boundaries. There would be space on the west and north side of City Hall, but would probably be less desirable by event planners. All possible areas on City Hall property are restrictive due to the size of space.
- 2) Allowing amplification or no amplification for events is another serious consideration. Due to the closeness of offices in relationship to possible areas, amplification could interfere during normal business hours.
- 3) Whether to permit or not is another consideration. Mesa County does require a permit, with no charge.

Attached to this memo is a legal overview by John Shaver, an aerial photo of City Hall property, Mesa County permit application, and a copy of Resolution 75-02.

**CITY ATTORNEY MEMORANDUM OPINION**

TO: Mayor Jim Spehar  
City Council

FROM: Acting City Attorney John Shaver

COPY: City Manager Kelly Arnold

DATE: December 19, 2003

SUBJECT: First Amendment

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**BACKGROUND:** This memorandum is written following your request for an informal opinion on possible time, place and manner restrictions for public assemblies on City Hall grounds.

This memorandum provides a basic explanation of the public forum doctrine and briefly explains some of legal issues involving restrictions upon free speech on government property. The last pages are a quick reference of “Cans and Can’ts” for purposes of helping the Council consider a policy for the possible use of some City Hall grounds/amendment of Resolution 75-02.

**DISCUSSION:** The Free Speech clause of the First Amendment to the United States Constitution provides that “Congress shall make no law ... abridging the freedom of speech.” The United States Supreme Court in construing, interpreting and applying the First Amendment has adopted a forum analysis as a means of determining when government’s interest in limiting the use of government property to its intended purpose out weighs the interest of those wishing to use the property for other purposes.

A key principle is that the First Amendment’s protections against government interference with speech do not extend to all property owned by the government. The right to use government property for one’s private expression depends on whether the property has by law or tradition been given the status of a public forum or if instead it has been reserved for other uses. The Supreme Court has established three types of fora in which free speech may occur on government owned property:

1. the Traditional Public Forum;
2. the Limited Public Forum;
3. the Non-Public Forum.

### The Traditional Public Forum

Traditional public fora are those places which by long tradition or by government fiat have been devoted to assembly and debate. Public streets and sidewalks fall into this category. Regulations limiting speech in traditional public fora are subject to strict scrutiny: strict scrutiny means that the government must show a compelling state interest for the regulation and show that the regulation is narrowly tailored to achieve the governmental interest. The government may enforce content neutral time, place and manner restrictions so long as the restrictions are narrowly tailored to further a significant governmental interest and leave other alternative means of speech.

### The Limited (Designated) Public Forum

A limited or designated public forum is a non-traditional forum that the government has opened for “indiscriminate use” by the general public. When a non-public forum is opened to expressive activity the Constitution forbids a government to enforce certain exclusions from a forum generally open to the public even if it was not required to create the forum in the first place. Regulations in a limited public forum are also subject to strict scrutiny as in a traditional public forum. A government may re-designate a limited public forum as a non-public forum; however as long as it is open as a designated forum the government is bound by the same standards as apply to a traditional public forum. All regulations in a limited public forum must be reasonable and regulate only time, place and manner.

### The Non-Public Forum

A non-public forum is any government property that is neither a traditional nor a limited public forum and one which is not open for indiscriminate access by the general public. Limitations on expressive activity conduct on a non-public forum are subject to a limited review. Regulations must be reasonable and content neutral.

To determine the nature of the forum the courts evaluate one or more of the following factors:

#### Physical location and layout:

Is the location of the forum enclosed in a place that is considered a non-public forum? For example, a sidewalk along a City residential street is viewed as a traditional public forum while a sidewalk adjacent to residential structures on a military base is a non-public forum. The Court has recognized that the location of property has a bearing “because separation from acknowledged public areas may serve to indicate that the separated public property is a special enclave subject to greater restriction.”

When analyzing physical location and layout the Court has recognized a property may be unique from its surroundings/dissimilar to other governmental property. In the case of *Lebron v. National Railroad Passenger Corp.*, an artist sought access to the “Spectacular,” a display space that dominates the west wall of the rotunda of the upper level of Penn

Station in New York City. The Court held that the Spectacular, rather than all of Penn Station was the forum to be considered.

**Access:**

What access is sought by the speaker? Forum analysis is not completed merely by identifying the government property at issue. Instead, in defining the forum the courts have focused on the access sought by the speaker. When speakers seek general access to public property, the forum encompasses that property. In cases in which limited access is sought the courts have taken a more tailored approach to ascertaining the perimeters of a forum within the confines of the government property.

**Traditional Use:**

What expressive activity has historically been allowed on the property? Has the property been open to expressive activity over a significant period of time? If the traditional use of the forum is to allow public expression, then the court is likely to find that it is a traditional public forum.

**Government Intent:**

Did the government intentionally open the forum to public expression? The government does not create a public forum by inaction or by permitting limited discourse but only by opening a non-traditional forum for public use. Courts will look to the laws, regulations or expressly adopted policies to determine the government's intent.

**Written guidelines, polices or past practice:**

Has the government regulated the forum through a set of written guidelines or policies? If so, how has the government followed those guidelines or policies? What has been the government's actual, past practices with respect to expressive activity in the forum? If there are written guidelines or policies have the government's past practices conflicted with those guidelines?

When the government does not have a written policy or guidelines regarding the speech allowed in the forum the court will look to the government's historical practices to determine what speech is intended to be allowed. If the government's actual practice is different than the written policy the court will analyze the forum based on the actual practice. When neither past practices nor written policies determine the forum, then courts will compare past practices with the stated purposes of the forum to determine the true nature of the forum.

Government as proprietor:

Is the government acting as a proprietor rather than as a lawmaker? A non-public forum will be found where the government is acting as a proprietor. A government's actions in that capacity, managing its operations rather than acting as lawmaker with the power to regulate or license, will not be subjected to heightened review to which its actions as a lawmaker may be subject.

OPINION: The courts have struggled with the determination of what constitutes a limited public forum, which is what I understand from Council's preliminary discussions is what is contemplated for a portion of the City Hall grounds. Part of the reason for that struggle is that many governments have been reluctant to clearly and carefully articulate criteria for use. For purposes of revisiting Resolution 75-02 I would advise that the Council carefully consider what it expects to be the uses of any designated fora and that it clearly articulate the rules for those uses. As noted above key to successfully designating a forum is an understanding that once the forum is designated that there can be no restriction of the content of the expressive activity, only reasonable time, place and manner restrictions may be imposed.

If you need or require a formal opinion or would like to see any of the decisions in the underlying cases, please let me know. Thank you for the opportunity to assist you with this matter. Once you've had opportunity to consider this memo and discuss/set Council policy I would be pleased to provide you with a comprehensive opinion, direction or assistance on this matter. As well, I would be pleased to assist City Manager Arnold with the preparation of a policy and/or written directive.

## CANS and CAN'TS

The following material is intended to be a quick reference to what practices have or have not survived litigation. Case citations are available on request.

### CANT'S

Unilateral Governmental Imposition of Substantial "Security Zone" between Groups and Audience

Attempted Imposition of Security Bond for Anticipated Public Safety Costs for Event

Denial of Event Based on Threat of Hostile Spectators/Participants

Rejection of Permit Based Upon Standard less Criteria

Denial of Event Based Upon Absence or Lack of Adequate Police Protection

Denial of Activity Based Upon Damage to Vegetation

### CANS

Denial of Specific Location as the Result of a Narrowly Drawn Regulation

- limiting City Hall assembly to the area west of the Cornerstones
- prohibiting climbing or standing on the fountain, sculptures, Cornerstones, wall
- distance restrictions from doors/provision for unimpeded ingress and egress to City Hall
- daylight hours only (9 a.m. to 4 p.m.?) - unlimited times on weekends and holidays
- "occupancy" limit

Non-expressive Activities May be Barred

- nude sunbathing, camping and sleeping may clearly be prohibited

Amplification and/or Electronic Equipment May be Regulated or Prohibited

If allowed then:

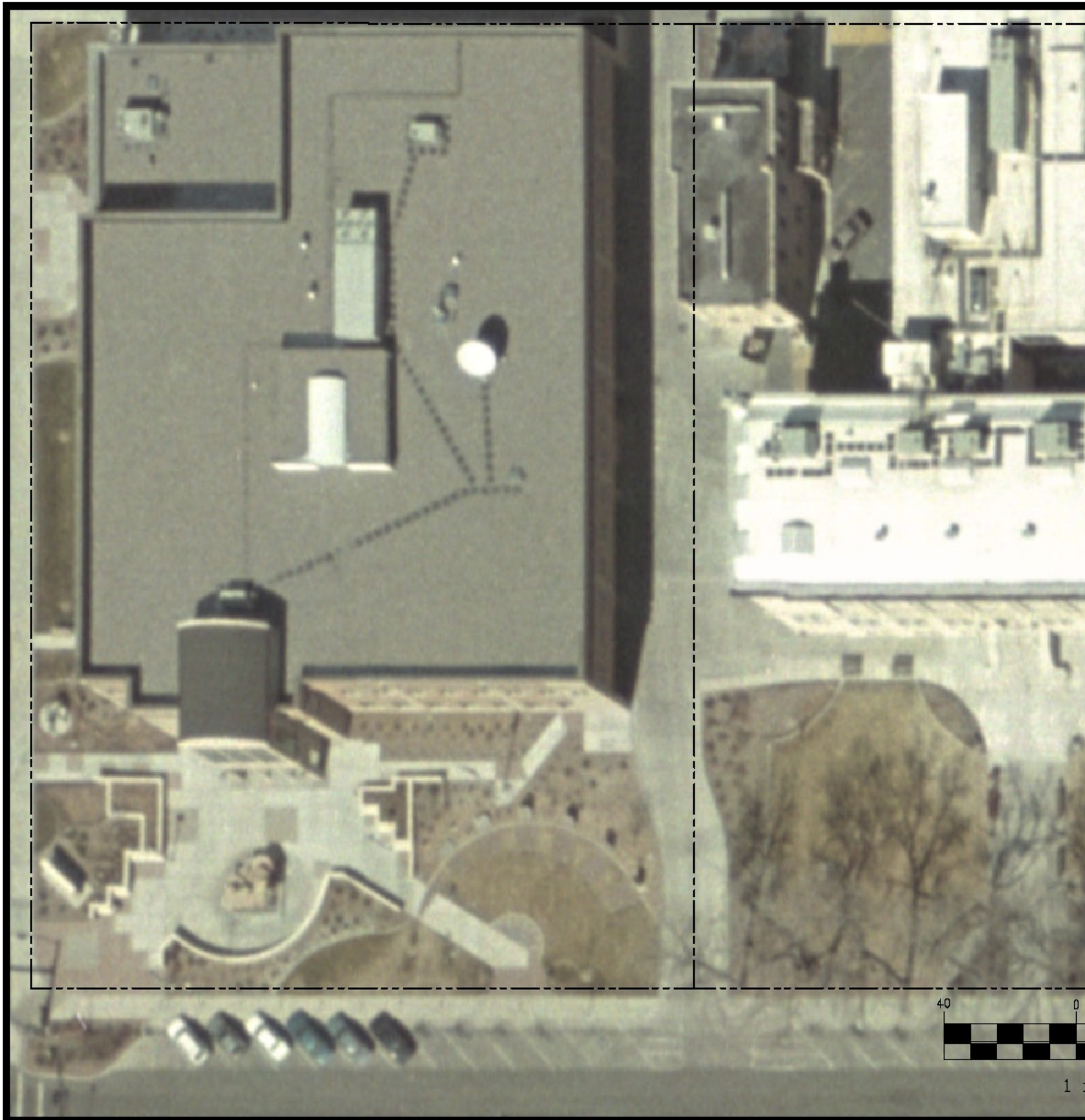
- City provided
- Time restrictions on use

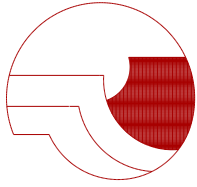
#### Other Rules

- The City Council may change these rules at any meeting.
- The City Manager may terminate the speech, in the event of danger to persons or property or disruption of City Hall functions or if any rule is violated by any person.
- If the City Manager terminates the speech an alternate forum should be available – possible alternate forum is the County Courthouse.









# Mesa County Facilities and Parks Department

P.O. Box 20,000 □ Grand Junction, Colorado 81502-5024 □ PH. (970) 244-3230 FAX (970) 244-3240

## PUBLIC ASSEMBLY APPLICATION

Mesa County Courthouse, 544 Rood Ave, Grand Junction CO.  
(PLEASE TYPE OR PRINT ALL INFORMATION)

### GENERAL INFORMATION:

DATE OF REQUEST:

RESPONSIBLE ORGANIZATION:

ADDRESS:

CITY:

STATE:

ZIP:

CONTACT PERSON:

TITLE:

PHONE# (DAY)

(EVENING)

(FAX)

### EVENT INFORMATION:

DATE OF EVENT:

ENDING DATE:

PROGRAM START TIME:

PROGRAM END TIME:

ELECTRICITY REQUIRED: NUMBER OF PARTICIPANTS EXPECTED:

TYPE OF ASSEMBLY -

DESCRIBE THE REASON FOR HAVING THE EVENT:

Organization

Authorized Signature

Date

## Resolution No. 75-02

### ADOPTING A POLICY FOR THE USE OF CITY HALL GROUNDS FOR OTHER THAN GOVERNMENTAL FUNCTIONS

#### Recitals.

The United States Supreme Court has established rules to guide local, state and federal governments regarding the use of government lands and facilities with respect to free speech. Simply stated, those rules require that if a government allows any group or individual to use or rent the government's lands or buildings for any activity or purpose that involves "speech," all other groups and individuals must have the same opportunity, subject only to what the court has called "reasonable time, space and manner" requirements.

For a local government such as the City of Grand Junction, these U.S. Supreme Court rulings mean that the use of City facilities or property to convey a message by a non-government group or person may mean that the facility or property is a "limited public forum."

The difficulty that has been dealt with in those Supreme Court cases involves each community's definition of "acceptable" speech and public behavior. The courts resolve these questions by reference to one of the unique features of the U. S. Constitution: highly controversial, even unpopular, views and speech must receive the same treatment from government as does popular and widely held beliefs.

Thus, each community must first decide if its local governmental facilities should be the location for community debate and discussions—other than government business. In fact, the term "soap box" speeches derives from just such messages given atop the actual soap boxes in London's Hyde Park.

Many communities have decided that such non-governmental speech, of whatever form, is best kept separate from local governmental facilities, just to avoid the complications that can flow from the creation of "soap box" *fora*.

Unfortunately, in order to implement that conclusion, no requests for use of local facilities can be granted, as mandated by the U. S. Supreme Court.

We reach our conclusion based on the following findings and beliefs:

- 1) With regard to the use of City Hall grounds at the City Hall located at 250 N. 5<sup>th</sup> St. in Grand Junction, we find that the community's best interest would be served by not creating a "limited public forum."
- 2) We acknowledge that "free speech" can still occur on the adjacent sidewalks in accordance with the U S Supreme Court constitutional directives. Such areas are termed "traditional public forums" by the courts.

- 3) We reach these conclusions reluctantly, after serious and probing debate because we do not want to reject at any level the community's desires to memorialize the horrors of September 11, 2001.
- 4) As individual members of the community, we applaud efforts to remind us all of our heritage, our deeply held mores, and our common history. We must, however, distinguish our individual beliefs from the standards and policies of our home rule city government.
- 5) We adopt this policy based on the clear directive of the United States Supreme Court.

**NOW THEREFORE BE IT RESOLVED:**

The grounds of City Hall are not appropriate for use by other than governments for "speech," as defined by the federal and state courts.

The staff of the City is directed to communicate this policy to those interested, along with our reasoning therefor, and the legal precedents that direct our decision.

ADOPTED this 17<sup>th</sup> day of July, 2002.

/s/: Cindy Enos-Martinez  
President of the Council

/s/: Stephanie Tuin  
City Clerk

# Memo

**To:** City Council  
**From:** City Attorney and City Manager  
**Date:** 12/16/2011  
**Re:** First Baptist Church Request/Public Forum

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[Confidential: Until the Council determines its position, this memorandum should be treated as privileged.]

**The First Baptist Church (7<sup>th</sup> and Grand) desires to hold a September 11<sup>th</sup> memorial at the Cornerstones of Law and liberty. The details of the request are:**

Four day event, beginning September 11, 1001 and ending September 14, 2002.

- Participants would read from the Bible around the clock;
- The church would supply a generator for electricity to power the amplified sound and to provide night-time lighting;
- The event would take place on the south side of City Hall "adjacent to or within the Cornerstones of Law and Liberty.";
- The speakers would use a podium, and would keep the volume of the amplified sound low to avoid disruptive effects.

Summary of the Issue: Use of the Cornerstones area or other portions of the City Hall grounds for the Church's request fits the legal definition of creating the Cornerstones area as a "limited public forum." Once the City authorizes one group or person to make such use of any part of City Hall, such area is likely legally available to any citizen or other group, for whatever message they desire.

While the City can make reasonable rules regarding "time, place and manner" of the use and speeches in a "limited public forum," the content cannot be controlled or limited in any way.

Stated another way, if any City rules for a limited public forum area have the effect of limiting or controlling what is said, the rules are unconstitutional. Rules that only control when and how and where the speech is made-- and leave the content to the

speaker's discretion – are constitutional. *Caveat*: such rules must be applied with equal vigor to every possible message.

Discussion:

Reasonable "time, place and manner" rules could include:

- No amplification; only the human voice can be used to convey the message;
- Specify allowed hours of usage;
- Only some specific area of the City Hall grounds (or internal rooms and facilities) can be used;
- Limits on the use of artificial lighting.

Of course, allowing such a "limited public forum" does not mean that threats, harassing behavior, or for interference with the free and safe passage of City Hall visitors, employees and pedestrians are approved; such behaviors would continue to be illegal, with or without the creation of a "limited public forum."

A public forum can be created consciously or inadvertently over time and usage.

If a limited public forum is allowed, other requests to "speechify," even if the content is expected to be vile and obnoxious, cannot be rejected.<sup>1</sup>

The south entrance area of the adjacent Mesa County courthouse is likely already a limited public forum: It has been used for decades as a place where anyone may express that person's views.<sup>2</sup>

These Supreme Court rules are based on the Court's interpretations of the following language of the First Amendment to the U. S. Constitution: "Congress shall make no law ... abridging the freedom of speech."

While there can be no question but that the Church has a constitutionally guaranteed right to present the speech as it proposes, the question at hand is a different question: Should such speech should occur at City Hall? Granting this request likely means that the Cornerstones area is thereafter open to "indiscriminate use by the general public." *Perry Educ. Ass'n v. Perry Local Educators' Ass'n.*, 460 UY.S. 37 (1983)<sup>3</sup>

However, a decision in 2002 to allow the proposed use of the south side of City Hall, does not mean that the decision can never be changed. The Supreme Court has only ruled that although the "state" is not required to indefinitely retain the open character

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<sup>1</sup> "Speech" in this context means any communication, whether with words, graphics, symbols, mime, etc.

<sup>2</sup> It does not matter that no one with an obnoxious or offensive viewpoint has never used the court house steps for some extended "free speech" marathon. Given the historical use of the courthouse steps for political speeches and other community messages, that south side of the courthouse is nearly guaranteed to be viewed by the courts as a forum where people offer their thoughts on any subject at all.

<sup>3</sup> The word "indiscriminate" in this context means that the government cannot choose between messages that it prefers to hear and those messages (or speech) that it (or the members of Council) does not want to hear.

of the facility, while it does, the standards for a "traditional public forum" are the rules. *Id.* A traditional public forum is one in which "by long tradition or by government *fiat* ha[s] been devoted to assembly and debate." *Id.* Sidewalks adjacent to City Hall, and the entrances from those sidewalks to the front doors are classic examples of a traditional public forum.

**CC:** Asst. City Attorney, Asst. City Manager, Department Heads, City Clerk