

**Attach 1
Cable TV Franchise Update**

CITY OF GRAND JUNCTION

CITY COUNCIL AGENDA								
Subject		Cable TV Franchise Discussion						
Meeting Date		19 April 2004						
Date Prepared		13 April 2004			File #			
Authors and Presenters		John Shaver & David Varley		City Attorney Assistant City Manager				
Report results back to Council		<input type="checkbox"/>	No	<input type="checkbox"/>	Yes	When		
Citizen Presentation		<input type="checkbox"/>	Yes	<input type="checkbox"/>	No	Name Paul Kugler, Bresnan Comm.		
<input checked="" type="checkbox"/>	Lunch Workshop	<input type="checkbox"/>	Formal Agenda		<input type="checkbox"/>	Consent	<input type="checkbox"/>	Individual Consideration

Summary: This workshop is the continuation of a Council discussion regarding a cable television franchise with Bresnan Communications.

Action Requested/Recommendation: Council discussion and direction regarding a cable television franchise.

Attachments: 1) A memo summarizing Bresnan Communications operations and services in Grand Junction. 2) A report summarizing information about cable television franchise renewal and/or transfer.

Background Information: City Council discussed this topic at a workshop on 05 January 2004 and again at a workshop on 02 February 2004. At the second workshop Council discussed the options of working toward a more modern franchise or a contract agreement with Bresnan. As background information, data was provided concerning the services Bresnan provides to two other cities (Cheyenne, Wyoming and Billings, Montana).

Bresnan's proposal for data services to the City of Grand Junction was also reviewed and discussed. At the February meeting Council directed staff to develop a report detailing current services being provided by Bresnan and the background for a formal agreement with Bresnan Communications. Attached are two reports that provide the requested information and will serve as a basis for Council's continued discussion at the workshop on 19 April 2004.

It is anticipated that City Council will discuss the various options for developing an agreement with Bresnan Communications and provide direction to staff for any additional actions that might be desired.

April 12, 2004

David Varley
City of Grand Junction
250 North Fifth Street
Grand Junction, CO 81501

Re: Bresnan Communications Operating in Grand Junction, Colorado

Dear Mr. Varley:

Bresnan Communications appreciates the opportunity to operate within Grand Junction, Colorado. The following addresses our accomplishments since the system was purchased by Bresnan Communications on March 20, 2003.

Bresnan Communications recognizes Revokable Permit 914156 signed March 16, 1966 as a franchise agreement.

Bresnan Communications provides the City with 2.5% of gross revenues paid semi-annually. On August 29, 2003 a check in the amount of \$89,398.66 was delivered to the City and on February 25, 2004 a check in the amount of \$96,633.03 was delivered to the City.

In compliance with the City franchise, a \$20,000 Franchise Bond has been posted.

Bresnan Communications maintains full compliance with all Federal Communications Commission rules and regulations. The following rules and regulations may be of special interest to you:

76.309 Customer Service Obligations. Bresnan Communications meets and exceeds this section of the FCC rules and regulations. The Grand Junction office is open 8am to 6pm Monday through Friday and 8am to 4pm on Saturday. Trained representatives are available 24 hours a day, 7 days a week. For customer convenience, Bresnan Communications maintains payment drop boxes located in several grocery stores throughout our community. FCC regulation for standard installations is within 7 business days after the order is placed. In Grand Junction over 90% of standard installations are completed within 3 business days.

76.601 Technical Standards. Bresnan Communications insures the Grand Junction system is designed, installed and operates in a manner that fully complies with FCC provisions.

We currently maintain 776 miles of coaxial cable and 144 miles of fiber in our hybrid fiber coax system. Bresnan Communications conducts complete performance testing twice each calendar year.

76.611 Cable Television Basic Signal Leakage Performance Criteria. Bresnan Communications performs signal leakage testing in aeronautical radio bands once each calendar year. The Cumulative Leakage Index (CLI) in our system remains well below FCC maximum leakage standards.

11.11 Emergency Alert System (EAS). Bresnan Communications remains in compliance with all FCC regulations governing the Emergency Alert System. Required testing is monitored and recorded to insure readiness in the event of an emergency.

Bresnan Communications is committed to provide customers with the finest entertainment, quality and selection of video programming. On September 3, 2003, the Grand Junction system added 66 additional channels. On April 12, 2004, a 19 channel Spanish digital tier was added. Attached is a channel line-up for your convenience.

Providing advanced services to the residents and businesses of Grand Junction is a continual commitment. Video On Demand (VOD) will launch April 22, 2004. High Definition Television (HDTV) and Digital Video Recorder (DVR) are scheduled to launch in 2004 also. Over 7,000 of our customers currently subscribe to Bresnan OnLine, our lightning fast broadband internet service. Our Bresnan OnLine Grand Junction Home Page has direct links to the City Of Grand Junction and the Grand Junction Area Chamber of Commerce.

Bresnan Communications is now serving over 300 commercial customers with High Speed Data and Video Services in the Grand Junction Area. Below are some examples:

Existing Customers

St. Mary's Hospital – Bresnan is providing St. Mary's hospital with fiber services for High Speed Internet and a Virtual Private Network (VPN) Interconnect Services. St. Mary's will initially provide VPN connectivity to over 30 doctors offices and clinics in the Grand Junction surrounding area. Bresnan has also proposed a VPN solution for hospital employees that may need to access the St. Mary's network from their homes.

Mesa County INET - Bresnan currently provides 9 Mesa County locations with a private 100Mbps shared Ethernet network via fiber. The network is scalable to 1000Mbps. Bresnan also provides Mesa County with a fiber based High Speed Internet connection.

Mesa College – Bresnan is supplying Mesa College with over 1000+ outlets of high quality digital cable.

Proposed Customers

City of Grand Junction – Bresnan is proposing a 100Mbps fiber shared Ethernet network connecting 6 locations in the Grand Junction area. The proposed network is scalable to 1000Mbps. Bresnan is also proposing a VPN solution for city employees to access the City's network from home.

Mesa County School District 51 – Bresnan is proposing a 100Mbps fiber shared Ethernet network connecting 41 schools in the Grand Junction area. The proposed network is scalable to 1000Mbps. The network design includes a fiber based High Speed Internet Connection. Bresnan is also proposing a VPN solution for school employees that need to access the School District's network from home.

Bresnan Communications is committed to education.

- ❖ Our policy is to provide every public and private school with at least one free outlet of Basic and Expanded Basic video service.
- ❖ Bresnan Communication is instrumental in providing Homework Hotline to Grand Junction on cable channel 12 every Monday through Thursday from 4:30 to 5:00pm
- ❖ On September 22, 2003 the C-SPAN School Bus visited Grand Junction High School and Mesa State College
- ❖ February 22-24, 2004, Judy Jepson, Mesa County Valley School District 51, attended the C-SPAN Conference for Educators
- ❖ Provide "Cable in the Classroom" with over 540 hours of commercial free programming each month to our local schools

Bresnan Communications is involved in many community organizations in Grand Junction including Mesa County Partners, American Heart Association and March of Dimes.

Bresnan Communications employs 63 residents at the Grand Junction Office. We are dedicated to providing excellent customer service. It is our pleasure to serve Grand Junction, Colorado!

Sincerely,

Paul Kugler
General Manager

CITY OF GRAND JUNCTION
CABLE TELEVISION FRANCHISE RENEWAL/TRANSFER:
BRESNAN COMMUNICATIONS

CITY COUNCIL AGENDA
April 19, 2004

Procedural Context. We have not reviewed Grand Junction's (the "City") current franchise, but understand it consists of a simple revocable permit authorized by voters in 1966 and handed down from company to company since then. Bresnan Communications ("Bresnan"), the new owner of the local cable system, has apparently not yet decided to accept, and conversely has also not been assigned, the agreement. Presumably this means 1) that Bresnan has not submitted a Federal Communications Commission ("FCC") Form 394 to the City, and 2) that the existing permit does not establish a fixed term or contain an expiration date.

1. The filing of Form 394 following the sale of a locally-operating cable company triggers an automatic 120-day transfer review period. If a franchising authority does not act to approve or disapprove a transfer within 120 days from receiving a Form 394, the transfer is deemed approved. 47 C.F.R § 76.502). Bresnan may take the position it does not have to file a Form 394 if the existing permit does not prohibit transfers, but the opposite legal argument can also be made.

2. The procedural mechanics of Section 546 of the Cable Act, the primary legal provision governing cable television franchise renewals by local governments, rely heavily on the expiration date established in the existing franchise. Under Section 546, for example, a franchising authority (meaning any local jurisdiction such as Grand Junction) can unilaterally initiate a cable television franchise renewal between the 36th and the 30th month prior to the expiration of the existing franchise. Lack of an expiration date could, arguably, place the agreement outside the standard renewal provisions contained in the revised Cable Act, 47 U.S.C. § 546.

Legal Background: The Cable Act.

- **Powers:** The Telecommunications Act of 1996 has received extensive press but the seminal law regarding cable television authorization and regulation remains the 1984 Cable Act, which was only slightly amended in 1996, and, prior to the Telecommunications Act, in 1992.

The 1984 Cable Act was passed largely in response to industry requests for federal intercession against a developing patchwork of inconsistent policies and procedures at the local level. While the Act established consistent franchising standards nationwide, however, it firmly sanctioned the role of local governments in the

regulation of cable television providers and placed primary responsibility for authorizing cable television systems upon local jurisdictions. In general terms, the Cable Act does not allow local government authorities to require specific kinds of commercial programming (47 U.S.C. § 544), require specific transmissions technologies (47 U.S.C. § 544(e)), or, except within narrow limits, regulate service rates (47 U.S.C. § 543). On the other hand, localities are specifically authorized to adopt and enforce customer service standards (47 U.S.C. § 552), require the payment of franchise fees of up to 5% of gross revenues (“derived from the operation of the cable system to provide cable services” - 47 U.S.C. § 542), require PEG facilities and services adequate to meet the cable-related needs and interests of the community (47 U.S.C. §§ 544, 531), and, within defined limits, provide institutional networks for educational and governmental use (47 U.S.C. §§ 531). As a part of the franchising process, the local government can also define the areas in which an operator must serve, and establish schedules for the build out or upgrade of the cable system within its jurisdiction. Based on their inherent police powers, of course, local jurisdictions can establish regulations for cable operators’ construction in, and use of, public rights-of-way, and mandate various safety protections.

- **“Franchise”:** A key definition in the Cable Act, settled upon only after considerable debate, is the term, “franchise.” In the legal lexicon legislated in 1984, “franchise” has a broader application than it may in general business usage. Under the Cable Act, a *franchise* includes any “initial authorization, or renewal thereof...issued by a franchising authority, whether such authorization is designated as a franchise, permit, license, resolution, contract, certificate, agreement, or otherwise, which authorizes the construction or operation of a cable system.” 47 U.S.C. § 522(9). A franchising authority, incidentally, “means any governmental entity empowered by Federal, State or local law to grant a franchise..” 47. U.S.C. § 522(10).

- **Franchise Requirement:** The Cable Act provides that, “Except to the extent provided in paragraph (2) and subsection (f) of this section, a cable operator may not provide cable service without a franchise.” Aside from municipal video programming distributors, the one exception is that, “Paragraph (1) shall not require any person lawfully providing cable service without a franchise on July 1, 1984, to obtain a franchise unless the franchising authority so requires.” 47. U.S.C. § 541.

The City of Grand Junction. Based on the Cable Act, the City qualifies as a franchising authority, and the existing revocable permit, since it does and has authorized the operation of a cable system, constitutes a “franchise.” For legal purposes, then, it would seem to be within the City’s rights to institute renewal proceedings. If the City, as the relevant local franchising authority, requires a franchise, Bresnan must have some sort of a document authorizing it to provide cable service. It is possible, on the other hand, that Bresnan could object, submit a Form 394, and insist only upon a transfer review, on the theory that the existing revocable permit is its “franchise.”

- **Transfers:** The scope of review in the case of a transfer request may be narrower than for a renewal. Cable operators typically contend that local jurisdictions considering a transfer request are limited to review of the transferee's financial, technical and legal qualifications, in accordance with the parameters of the prescribed form. Recent case law suggests local authority with regard to transfers is broader than that, *see, e.g., Charter Communications, Inc. v. County of Santa Cruz*, 304 F.3d 927 (9th Cir. 2002), but, if nothing else, the time limitation (120 days, with some extensions possible) necessarily circumscribes the kinds of issues that can be addressed.

- **Renewals:** The renewal of a franchise under the Cable Act not only tends to cover a wider range of issues than transfers, it also includes a wider range of possible procedures and schedules. The most serious mandates under the § 546 Renewal provision apply if the franchising authority reaches the point of actually denying the franchise renewal. The Renewal section as a whole is designed in many respects to protect the cable operator's rights, and so it requires local jurisdictions to apply a kind of procedural due process before they are legally empowered to terminate the cable operator's authority to operate in the jurisdiction. In most cases, since denial is *not* the ultimate objective, adherence to the renewal process rules primarily provides leverage to either side in the event the other side ceases to negotiate in good faith, and a kind of catastrophic event insurance against the very unlikely occurrence of termination. Thus most renewals are finalized based on business-style negotiations and the process can be as lengthy or as uncomplicated as the parties choose.

RENEWALS

The renewal of a cable television franchise represents an opportunity to enhance local communications infrastructure, provide for PEG programming and facilities, and improve access to video and communications services for the community as a whole. Most cable consultants recommend that local jurisdictions approach the renewal process seriously and follow the procedures conscientiously in order to protect their rights and thoroughly evaluate community needs. Most agree, however, that the optimal outcome is a negotiated franchise in which both the public's and the cable operator's interests are protected.

Renewals come in two flavors, informal and formal. As a practical matter, both processes tend to begin the same way. Under the Cable Act's Renewal provision (47 U.S.C. § 546), renewals are typically initiated when the cable operator or the franchising authority submits a written request or notice to the other within the 6-month "window" that begins 36 months from the expiration of the existing franchise. If the cable operator makes this request, renewal cannot be denied without recourse to the formal process. Again, however, even after the formal process is launched, the most common result is an informal renewal and the parties are always free to agree upon franchise terms at any time.

- The Formal Renewal:

1. Ascertainment: Once a formal renewal is initiated with a proper notice, the Cable act allows the franchising authority six months to commence the so-called “ascertainment process.” The ascertainment process is designed to afford the public and the local jurisdiction itself the chance (a) to identify future cable-related community needs and interests that should be addressed in a franchise agreement, and (b) to review the past performance of the cable operator.

The ascertainment process is usually accomplished much in the way that the City prepared its recently-approved Strategic Plan, although the focus, naturally, is confined to such matters as cable services and communications needs. City and cable personnel might convene public meetings to gather input regarding community aspirations, hold public hearings to evaluate performance issues, perform technical or engineering audits to determine if the system is operating optimally, and review complaint reports or conduct telephone polls to find out whether subscribers are satisfied with existing services.

The Cable Act requires appropriate notice to the public in the franchise area of the ascertainment proceedings, and the public (including, presumably, the cable operator) must have an opportunity to participate and comment.

2. The Proposal: When the ascertainment process is complete, the cable operator can submit a proposal for renewal on its own initiative, or the franchising authority can “request” a proposal and establish (with written notice) a date by which the “requested” proposal *must* be submitted. Either way, under § 546(b)(2), the proposal has to “contain such material as the franchising authority may require, including proposal for an upgrade of the cable system.” In other words, the franchising authority can set out a kind of template, requiring that the suggested franchise agreement address certain issues, such as franchise fees, PEG services and facilities, or upgrades, among other things.

Following the filing of the proposal, the franchising authority is required to provide “prompt public notice of such proposal.” During the four (4)-month period thereafter, it must then either renew the franchise or issue a preliminary decision denying renewal.

3. Administrative Proceedings: If a preliminary denial is issued, the franchising authority must promptly begin public administrative proceedings to formally pass judgment on four questions:

- a) Has the cable operator substantially complied with the material terms of the existing franchise and applicable law;
- b) Has the quality of the cable operator’s service, including signal quality, response to consumer complaints and billing practices, but without regard to the mix or

qualify of cable services or other services provided over the system (in other words, the kind of programming), been reasonable in light of community needs;

c) Does the cable operator have the financial, legal and technical ability to provide the services, facilities and equipment set forth in the proposal; and

d) Is the proposal reasonable to meet the future cable-related needs and interests of the community taking into account the cost of meeting such needs and interests?

During the administrative proceedings, which are characteristically conducted in a civil judicial hearing format, both the cable operator and representatives of the franchising authority must be “afforded fair opportunity for full participation, including the right to introduce evidence...and to question witnesses.” As with a court hearing, an official transcript is made and the decision is handed down in the form of a written order granting or denying the proposal based upon the record in the administrative proceeding. If the proposal is denied, and the franchise is therefore not renewed, the decision must be based on the failure to comply with the requirements set forth in subsections (a)-(d) (above), and if it is based on subsection (a) or (b), alone, the operator must have been provided notice and an opportunity to cure any deficiencies.

4. Judicial Review. Upon denial, the cable operator has the right to seek judicial review of the franchising authority’s decision under § 555 of the Cable Act, although review is limited, in general terms, to consideration of the preponderance of the evidence to support the four questions listed above (3) (a) – (d).

- **Informal Renewals.** The Cable Act Renewal section specifically provides for “alternative renewal procedures” following the provisions pertaining to formal renewal:

“Notwithstanding the provisions...of this section, a cable operator may submit a proposal for the renewal of a franchise pursuant to this subsection at any time, and a franchising authority may, after affording the public adequate notice and opportunity for comment, grant or deny such a proposal at any time.” 47 U.S.C. 546 (h).

Indeed, the language here specifically states that a proposal can be submitted at any time, even if the formal renewal process has begun, and no matter what stage it is in. So the informal and formal renewal processes can run parallel to each other, and whenever an agreement is reached, both processes stop and the franchise is enacted. While the formal procedural requirements tend to drive the process initially and provide the motivation to grapple the thorny issues surrounding any renewal, ninety percent of the time or more, the ultimate resolution is achieved somewhere along the line by means of informal agreement.

We have not been asked to make a recommendation, but a quick closing comment may be helpful. We believe the process of ascertaining public needs and gathering information about communications operations is of great value to any community. Moreover, the protections for each side in the renewal process are available only by following the formal procedures. Therefore, we generally encourage clients to initiate the formal renewal process.

In the case of the City, however, the lack of a clear termination date to trigger the legal procedures may undercut the ability to utilize the formal renewal process. On other hand, if the formal renewal process is not available, and no Form 394 has been submitted, the most likely interpretation of Bresnan's legal status would be as an unauthorized cable operator. The City could simply decide then to exercise its authority to require a franchise and ask Bresnan to submit a proposed franchise containing certain items, as it would with a new operator. In this situation the process would be most like an informal renewal, with the City generally in control (within the limitations of its authority under the Cable Act.)

Whether a franchise should be required at all is certainly the City's decision. Since the law will doubtless treat any agreement – any size, any subject, and in however many parts – between the City and Bresnan as a “franchise” for the purposes of the Cable Act, in accordance with the broad definition therein, there is a strong argument to be made for incorporating all terms agreed to between Bresnan and the City into one document. Having a coherent, identifiable “franchise agreement” would protect the City in case a competitive operator ever appears. This may or may not be likely, but if a competitor can argue that there is no “franchise” per se, under the Cable Act, since new entrants cannot be subjected to more extenuating conditions than the incumbent, a competing cable provider might seek to offer service to part of the City without any authorization at all. Bresnan, as a fully-built-out incumbent, may actually be disadvantaged without a “franchise,” and there is potential for liability on the part of the City. A complete franchise, moreover, can address collateral issues that might not otherwise be considered in a piecemeal approach, such as privacy, indemnification, insurance, reporting and record keeping (important for determining franchise fees), and, of particular relevance here, future transfers and expirations.

We hope this is helpful. We are available to answer questions or provide additional materials as the Council sees fit. Thank you for the opportunity to assist the City in this matter.

EDWARDS & TAYLOR, LLC,
Norman B. Beecher.

Attach 2
Stormwater Authority IGA Update
CITY OF GRAND JUNCTION

CITY COUNCIL AGENDA							
Subject		Stormwater Authority IGA Update					
Meeting Date		April 19, 2004					
Date Prepared		April 12, 2004			File #		
Author		Greg Trainor		Utilities Manager			
Presenter Name		Kelly Arnold		City Manager			
Report results back to Council		X	No		Yes	When	
Citizen Presentation			Yes	X	No	Name	
X	Workshop		Formal Agenda			Consent	Individual Consideration

Summary: Update to City Council of the Stormwater Authority Intergovernmental Agreement drafted by the Authority Charter Committee made up of representatives of the City of Grand Junction, Mesa County, Town of Palisade, City of Fruita, and the Grand Junction Drainage District.

Budget: See attached budget detail.

The budget for 2004 is \$28,500, \$25,000 of which is an estimate of the “in-kind” contributions of staff. The budget for 2005 is \$150,000, with the City’s share to be \$45,000. The majority of the 2005 budget is a rate study. The Charter Committee felt that, depending on the progress of the formation of Authority, some of the 2005 budget could be spent in 2004.

Action Requested/Recommendation: April 19 review by City Council of the Authority IGA and budget. Formal adoption of the IGA in June of 2004.

Attachments:

1. Draft of Stormwater Authority Intergovernmental Agreement
2. Draft budget
3. Map of Authority boundaries

Background Information: The IGA is the collective effort of the Grand Valley Drainage Authority “Charter Committee” which has been meeting monthly since October 21, 2003. The City Council’s representative to the Charter Committee is

Dennis Kirtland, who communicated to Council on April 1 on the successes of the Charter Committee and the spirit of cooperation present in the meetings. Prior to October 2003, the Storm Steering Committee met for eight months to examine the alternatives for an area-wide solution to the many stormwater problems throughout the Grand Valley. The Authority will take on the responsibility that the charter organizations delegate to it, including coordinating stormwater management and funding stormwater capital improvements.

The Charter Committee has asked that all the public entities review the IGA during April, return to the Charter Committee at its next meeting on April 28, and formally adopt the IGA in June 2004.

The IGA is an intergovernmental agreement whereby the parties agree to delegate to the Authority certain powers for constructing, owning, and managing stormwater facilities; establishing stormwater standards for new development, acquiring and holding interests in real property, to establish contracts for services, set a budget, and establish stormwater fees and charges. The five-member Board of Directors will be made up of an appointee from each of the contracting parties.

It is anticipated that the Authority will contract initially with the Grand Junction Drainage District to carryout the responsibilities of the Authority.

INTERGOVERNMENTAL AGREEMENT
FOR THE CREATION OF THE
5-2-1 DRAINAGE AUTHORITY

THIS INTERGOVERNMENTAL AGREEMENT FOR THE CREATION OF THE 5-2-1 DRAINAGE AUTHORITY is made and entered into this _____ day of _____, 2004, by and between the CITY OF GRAND JUNCTION, a municipal corporation of the State of Colorado, with its principal office located at 250 North Fifth Street, Grand Junction, Colorado 81501, the TOWN OF PALISADE, a municipal corporation of the State of Colorado, with its principal office located at 175 East Third Street, Palisade, Colorado 81526, the CITY OF FRUITA, a municipal corporation of the State of Colorado, with its principal office located at 325 East Aspen Avenue, Fruita, Colorado 81521, the COUNTY OF MESA, a political subdivision of the State of Colorado, by and through the Board of Commissioners of Mesa County, Colorado, with its principal office located at 544 Rood Avenue, Grand Junction, Colorado 81501, and the GRAND JUNCTION DRAINAGE DISTRICT, a statutorily declared body corporate, with its principal office located at 722 23 Road, Grand Junction, Colorado 81505, all of which shall hereinafter be referred to as "Contracting Parties" and singularly shall hereinafter be referred to as a "Contracting Party."

W I T N E S S E T H:

WHEREAS, various drainage studies ("Studies") have been presented to Contracting Parties, which include recommendations for drainage structures and facilities necessary to accommodate current and anticipated drainage in basins located in the Grand Valley as herein defined and the Contracting Parties intend to obtain additional studies to address specific drainage needs in all basins in the area to be served by the 5-2-1 Drainage Authority;

WHEREAS, each of the Contracting Parties is authorized and empowered to provide necessary drainage services to their inhabitants to manage stormwater drainage to reduce or eliminate damage to existing or proposed water delivery systems and/or to construct and operate works and facilities necessary and convenient for management of stormwater quality within Contracting Parties' respective jurisdictions;

WHEREAS, the Federal Clean Water Act (40 CFR 122.26) requires that stormwater discharges from certain types of facilities be authorized under stormwater discharge permits

issued in Colorado by the Colorado Department of Public Health and Environment, Water Quality Control Division, (the "Division") pursuant to the Colorado Discharge Permit System ("CDPS") under Division Regulation No. 61;

WHEREAS, the Contracting Parties desire to implement Studies, undertake additional studies, comply with Federal requirements and the permitting process through the creation of a drainage authority pursuant to the provisions of CRS 29-1-204.2, as amended, to be named the 5-2-1 Drainage Authority with such drainage authority to have all of the powers and duties described in such statute;

WHEREAS, this intergovernmental agreement will serve a public purpose and will promote the health, safety, prosperity, security and general welfare of the citizens of the Contracting Parties and of the State of Colorado; and

WHEREAS, the Contracting Parties intend for this agreement to act as the contract document required by such statute.

NOW, THEREFORE, in consideration of the mutual promises and covenants contained herein, Contracting Parties agree as follows:

Section 1. Effective Date and Term. This agreement shall become effective as of the date set forth above. The term of this agreement shall be for ten (10) years from said effective date, and this agreement shall automatically renew for additional ten (10) year terms unless terminated by a written notice duly executed by the Contracting Parties one hundred eighty (180) days prior to the anniversary of the effective date; provided, however, that this agreement may be terminated or rescinded only in full compliance with this agreement.

Section 2. Creation of the Drainage Authority and Purposes. By and through the authority granted through CRS 29-1-204.2, as amended, the Contracting Parties hereby create a drainage authority to be known as the 5-2-1 DRAINAGE AUTHORITY, a quasi-governmental entity, ("Drainage Authority"). The purposes of the Drainage Authority shall be to provide adequate drainage facilities and appurtenances to serve the areas described in Exhibits "A" and "B," respectively, attached hereto and by this reference incorporated herein to own, operate and maintain such facilities and appurtenances once they are constructed, to implement the recommendations set forth in the Studies and future studies and to comply with federal and state permitting procedures and requirements.

Section 3. Services and Functions of the Drainage Authority. The Drainage Authority shall provide the following

services and functions with respect to the areas described in Exhibit "A" and shown in Exhibit "B."

3.01 Acquiring, constructing, owning, reconstructing, improving, rehabilitating, repairing, managing, operating and maintaining, by way of illustration and not by limitation, such facilities and systems deemed necessary to provide drainage to the Contracting Parties for the benefit of the inhabitants of such Contracting Parties or others at the discretion of the board of directors of the Drainage Authority, together with any and all appurtenances thereto or interests therein. As used in this agreement, the term "drainage facilities" may include facilities, structures and appurtenances designed to provide, manage and monitor drainage services and divert stormwater for the beneficial use thereof.

3.02 Reviewing plans and other documents of developments occurring within the jurisdictional boundaries of the Drainage Authority for the purpose of commenting on the same with respect to whether or not they comply with the agreed-upon standards referred to in Section 10 below.

3.03 Providing such other services or functions as may be authorized by law and determined by the Drainage Authority board of directors to be in the best interests of the Contracting Parties and the inhabitants of such Contracting Parties or others.

Section 4. Powers of the Drainage Authority. To enable the Drainage Authority to carry out its functions and provide the services and functions described in Section 3 above, the Drainage Authority shall have the following powers:

4.01 To develop drainage facilities and systems in whole or in part for the benefit of the citizens of the Contracting Parties or others at the discretion of the board of directors within the area set forth in Exhibit "A" and shown in Exhibit "B," subject to fulfilling the terms and conditions of this agreement.

4.02 To acquire, hold, lease (as lessor or lessee), sell or otherwise dispose of any legal or equitable interest in real or personal property utilized for the purposes of drainage.

4.03 To conduct its business and affairs for the benefit of the inhabitants of the Contracting Parties or others.

4.04 To enter into, make and perform contracts of every kind with other local governmental entities, the State of

Colorado or any political subdivision thereof, the United States or any political subdivision thereof and any individual, firm, association, partnership, corporation or any other organization of any kind, including a Contracting Party or Contracting Parties.

4.05 To make and enter into contracts with one (1) or more of the Contracting Parties or third parties to provide services to the Drainage Authority for the undertaking or implementation of studies, administrative and clerical services or acquisition, construction, maintenance, repair and operation of facilities or systems together with all appurtenances thereto and interests therein.

4.06 To do and perform any acts and things authorized pursuant to CRS 29-1-204.2, as amended, under, through or by means of an agent or by contract(s) with any person, firm or corporation.

4.07 To employ agents, including but not limited to engineers, attorneys, auditors, accountants, architects and consultants and employees.

4.08 To incur debts, liabilities or obligations to the extent and in the manner permitted by law and borrow money and, from time to time, make, accept, endorse, execute and deliver bonds, notes and other obligations of the Drainage Authority for monies borrowed or in payment for property acquired or for any of the other purposes, services or functions of the Drainage Authority as provided by law and to the extent permitted by law, to secure the payment of any such obligations by mortgage, pledge, deed, indenture, agreement or other collateral instrument or by other lien upon or assignment of all or any part of the properties, rights, assets, contracts, easements, revenues and privileges of the Drainage Authority.

4.09 To own, operate and maintain real and personal property and facilities in common with others and to conduct joint, partnership, cooperative or other operations with others and to exercise all powers granted herein in joint, partnership or cooperative efforts and operations with others.

4.10 To condemn property for public use for the purpose of drainage, provided such property is not owned by any public utility and devoted to public use pursuant to state authority.

4.11 To sue, and to be sued, in its own name.

4.12 To have and use a corporate seal.

4.13 To fix, maintain and revise fees, rates and charges for all drainage functions, services or facilities provided by the Drainage Authority, such rates and charges, including differential rates and charges according to the benefit received, to be in such amount or amounts as necessary to provide for the acquisition or development of drainage facilities and appurtenances, the operation and maintenance of such facilities and appurtenances, debt service and reserves, capital improvements and other obligations and expenses of the Drainage Authority.

4.14 To adopt, by resolution regulations respecting the exercise of the Drainage Authority's powers and the carrying out of its purposes.

4.15 To receive contributions, gifts, bequests or other grants of cash, equipment or services from the Contracting Parties or other entities, individuals or political subdivisions.

4.16 To provide for the rehabilitation of any surfaces adversely affected by the construction of drainage facilities or systems through the rehabilitation of plant cover, soil stability and other measures appropriate to the subsequent and beneficial use of such lands.

4.17 To justly indemnify property owners or others affected for any losses or damages incurred caused by or which result from actions of the Drainage Authority.

4.18 To obtain insurance policies in amounts as determined by the board of directors.

4.19 In general, to exercise all powers that are now or hereafter may be conferred by law upon a drainage authority organized pursuant to CRS 29-1-204.2, as amended, or necessary, incidental, convenient or conducive to the attainment of the Drainage Authority's purposes and provision of its functions, services and facilities, subject to such limitations as are, or may be, prescribed by law.

Section 5. Board of Directors. The Drainage Authority shall be governed by a board of directors in which all legislative power of the Drainage Authority is vested.

5.01 The initial number of directors shall be five (5).

5.02 The governing body of each of the Contracting Parties shall appoint one (1) member to the board of directors. Two of (2) of the five (5) initial directors shall serve for a two (2) year term and three (3) of the five (5) initial directors shall serve for a four (4) year term. The initial terms of the directors appointed by the respective Contracting Parties shall be determined by lot. Each successive appointment shall be for a four (4) year term and all appointees may serve for successive terms.

5.03 Except as herein provided, each director shall serve at the pleasure of the governing body of the Contracting Party by whom that director was appointed.

5.04 A vacancy occurring in the board of directors, whether such vacancy be the result of resignation, death, removal or disability, shall be filled in the same manner of appointment or selection as provided in subsection 5.02 hereof.

5.05 Directors may receive compensation for their services as may be provided by resolution of the board of directors, and the board of directors, by resolution, shall provide for reimbursement to directors of their actual expenses for attendance at meetings of the board of directors and for expenses otherwise incurred on behalf of the Drainage Authority.

5.06 An annual meeting of the board of directors shall be held within the first one hundred twenty (120) days in each year at such place within the service area of the Drainage Authority as shall be designated to pass upon reports for the preceding fiscal year and to transact such other business as may come before the meeting. Failure to hold the annual meeting at the designated time or failure to hold the annual meeting in any year shall not cause a forfeiture or dissolution or otherwise affect the Drainage Authority.

5.07 The board of directors, from time to time, may provide by majority resolution of all directors for the time and place of holding regular meetings without notice to directors other than such resolution.

5.08 Special meetings of the board of directors may be called by the chairman or any two (2) directors, and it shall thereupon be the duty of the secretary to cause notice of such meeting to be given as hereinafter provided. Special meetings of the board of directors shall be held at such time and place within the service area of the Drainage Authority as shall be fixed by the chairman or director calling the meeting.

5.09 Written notice of the annual or of any special meeting of the board of directors shall be delivered to each director not less than two (2) or more than thirty (30) days before the date fixed for such meeting, either personally or by mail, by or at the direction of the secretary or, upon his default, by the person calling the meeting. If mailed, such notice shall be deemed to be delivered when deposited in the United States mail, addressed to the director at his address as it appears on the records of the Drainage Authority, with postage thereon prepaid.

5.10 Whenever any notice is required to be given to any director of the Drainage Authority under the provisions of law or this contract, a waiver thereof in writing signed by such director whether before or after the time stated therein, shall be equivalent to the giving of such notice. Attendance of a director at any meeting of the board of directors shall constitute a waiver by such director of notice of such meeting except when such director attends such meeting for the express purpose of objecting to the transaction of any business because the meeting is not lawfully called or convened.

5.11 A majority of the number of directors then in office shall constitute a quorum for the transaction of business; provided that, if less than a quorum is present, the directors present may continue the meeting from time to time and, provided further, that the secretary shall notify any absent directors of the time and place of such continued meeting. Unless otherwise provided herein, the act of a majority of the directors present at a meeting at which a quorum is present shall be the act of the board of directors.

5.12 A full board must be in office, present at a properly convened meeting, and have a super-majority consensus of at least seventy-five (75) percent to initiate condemnation proceedings.

5.13 A full board must be in office, present at a properly convened meeting, and have a super majority consensus of at least seventy-five (75) percent to institute or raise rates and/or fees.

5.14 The duties of the board of directors shall be:

a. To govern the business and affairs of the Drainage Authority.

b. To exercise all powers of the Drainage Authority.

c. To comply with the provisions of parts 1, 5 and 6 of CRS 29-1-204.2, as amended.

d. To adopt a fiscal resolution complying with statutory and other restrictions imposed by law on the affairs of the Drainage Authority, to govern the financial transactions of the Drainage Authority, including the receipt, custody and disbursement of its funds, securities and other assets, and to provide for the services of a firm of independent certified public accountants to examine, at least annually, the financial records and accounts of the Drainage Authority and to report thereupon to the board of directors.

e. To keep minutes of its proceedings.

f. To adopt such bylaws as appropriate for the conduct of its business not in conflict herewith.

Section 6. Officers. The officers of the Drainage Authority shall be a chairman, vice chairman, secretary, treasurer and such other officers and assistant officers as may be authorized by the board of directors from time to time to perform such duties as may be approved by the board of directors. The chairman and vice chairman shall be members of the board of directors, but the other officers of the Drainage Authority need not be members of the board of directors.

6.01 At the first meeting of the board of directors, the members of the board of directors shall elect officers who shall serve as such officers of the Drainage Authority until the next succeeding annual meeting of the board of directors and until their successors are elected and qualified.

6.02 Vacancies or new officers may be filled at any properly convened meeting of the board of directors.

6.03 Any officer or agent elected or appointed by the board of directors may be removed by a majority vote of the board of directors at any properly convened meeting, with or without cause, whenever in its judgment the best interests of the Drainage Authority will be served thereby.

6.04 In addition to duties designated by the board of directors, the duties of the officers shall include the following:

a. The chairman shall preside at all meetings of the board of directors and, except as otherwise delegated by the

board of directors, shall execute all legal instruments of the Drainage Authority. The chairman shall perform such other duties as the board of directors may prescribe from time to time.

b. The vice chairman shall, in the absence of the chairman, or in the event of his or her inability or refusal to act, perform the duties of the chairman and, when so acting, shall have all the powers of and be subject to all the restrictions upon the chairman. The vice chairman shall also perform such other duties as may be prescribed by the board of directors from time to time.

c. The secretary shall maintain the official records of the Drainage Authority, including this contract, bylaws, rules and regulations adopted by the board of directors, the minutes of meetings of the board of directors and a register of the names and addresses of directors and officers and shall issue notices of meetings, attest and affix the corporate seal to all documents of the Drainage Authority and shall perform such other duties as the board of directors may prescribe from time to time.

d. The treasurer shall serve as financial officer of the Drainage Authority and, pursuant to all fiscal resolutions adopted by the board of directors governing the financial transactions of the Drainage Authority and the restrictions imposed by law, be responsible for the receipt, custody, investment and disbursement of the Drainage Authority's funds and securities and for duties incident to the office of treasurer and shall perform other duties as the board of directors may prescribe from time to time.

6.05 The treasurer and any other officer or agent of the Drainage Authority charged with responsibility for the custody of any of its funds or property shall give bond in such sum and with such surety as the board of directors shall determine. The board of directors in its discretion may also require any other officer, agent or employee of the Drainage Authority to give bond in such amount and with such surety as it shall determine. The cost of such bond shall be an expense payable by the Drainage Authority.

Section 7. Indemnification of Officers and Directors. Each director and officer of the Drainage Authority, whether or not then in office, and the personal representative of his or her estate shall be indemnified by the Drainage Authority against all costs and expenses actually and necessarily incurred by him or her in connection with the defense of any action, suit or proceeding in which he or she may be involved or to which he or

she may be made a party by reason of his or her being or having been such director or officer, except in relation to matters as to which he or she shall be finally adjudged in such action, suit or proceeding to be liable for willful or wanton negligence or misconduct in the performance of his or her duty. Such costs and expenses shall include amounts reasonably paid in settlement for the purpose of curtailing the cost of litigation but only if the Drainage Authority is advised in writing by its counsel that in his or her opinion the person indemnified did not commit such willful and wanton negligence or misconduct. The foregoing right of indemnification shall not be exclusive of other rights to which he or she may be entitled as a matter of law or by agreement.

Section 8. Contracting Parties' Jurisdiction. No portion of this agreement shall be construed to waive or cede any jurisdiction any Contracting Party may claim or possess.

Section 9. Not a Partnership. As used in this agreement, the term "Contracting Parties" is not meant to indicate that the signatories to this agreement constitute a partnership as the term is understood in the Uniform Partnership Law, CRS 7-6-101, *et seq.*, as amended, or at common law. Nothing in this agreement shall create any joint or several liability or joint or several exposure to any Contracting Parties for statutory or administrative violations associated with discharges or compliance liabilities. Joint action under this agreement is strictly limited to the permitting, planning and other related processes as described herein, unless otherwise stated by subsequent resolution of the board of directors.

Section 10. Agreement Upon Standards. The Contracting Parties shall meet and agree upon a set of drainage standards to apply within the area to be served by the Drainage Authority. Each Contracting Party shall require new development located within its jurisdictional boundaries to comply with such standards to the extent such Contracting Party has authority over such matters. The Drainage Authority shall apply and enforce such agreed-upon standards within the area if such standards are not otherwise enforced through zoning, subdivision or other enforcement mechanism(s) of the Contracting Parties. If a Contracting Party's drainage standards are more restrictive than those agreed upon as provided herein and such Contracting Party desires to apply the more restrictive standards within the boundaries of its jurisdiction, then the more restrictive standards shall apply.

Section 11. Assets Held in Trust. All assets and properties of the Drainage Authority shall be held in trust by

the Drainage Authority for the purposes herein mentioned, including the payment of liabilities of the Drainage Authority.

Section 12. Adding Parties. No party may be added to this agreement as a Contracting Party without the two-thirds (2/3) consent of the Contracting Parties authorized by a written document formally approved by the governing body of each consenting Contracting Party. A party added as a Contracting Party shall be a municipality, special district or political subdivision of the state authorized to provide drainage facilities and subject to such terms and conditions as the board of directors, in its sole discretion, may determine; provided, however, that a new Contracting Party may be assessed a capital investment fee to cover its pro rata share of the costs of those capital assets previously purchased or constructed by the Drainage Authority for joint use by all Contracting Parties. The board of directors of the Drainage Authority, in its sole discretion, by two-thirds (2/3) consent, may add up to two (2) additional, at-large board members, each of whom must reside within the boundaries of at least one (1) of the Contracting Parties. Any such appointment of an at-large board member would be for a term of two (2) years and may be terminated at the expiration of any term or upon vacancy by two-thirds (2/3) consent of the board of directors of the Drainage Authority.

Section 13. Deleting Parties. A Contracting Party may withdraw from this agreement by written document authorized by the governing body of such Contracting Party, which shall be presented to the Drainage Authority. Notice of a Contracting Party's intent to withdraw from the Drainage Authority must be presented in writing to the board of directors of the Drainage Authority at a properly convened meeting of the board of directors of the Drainage Authority at least six (6) months in advance of the anticipated withdrawal date of such Contracting Party. Such withdrawal may only occur upon a two-thirds (2/3) consent of the Contracting Parties authorized by a written document formally approved by the governing body of each consenting Contracting Party. Withdrawal by a Contracting Party shall not release, alter or terminate that Contracting Party's jurisdiction with respect to fees, rates and charges levied or imposed by the Drainage Authority on properties within that Contracting Party's jurisdiction at the time of such withdrawal.

Section 14. Adding or Deleting Service Areas. The service area of the Drainage Authority described in Exhibit "A" and shown in Exhibit "B" may be increased or decreased by two-thirds (2/3) consent of the Contracting Parties authorized by a written document formally approved by the governing body of each consenting Contracting Party. Any addition to the service area

of the Drainage Authority must be located within the boundaries of at least one (1) of the Contracting Parties.

Section 15. Distribution on Termination. In the event of the rescission or termination of this agreement and the dissolution of the Drainage Authority, all of the assets of the Drainage Authority shall immediately vest in the Contracting Parties, subject to any outstanding liens, mortgages or other pledges of such assets. The interests in the general assets of the Drainage Authority shall rest equally in each Contracting Party; provided, however, that the Contracting Parties may otherwise provide, by unanimous agreement, for disposition of any and all interests of the Drainage Authority to any successors to the Drainage Authority or for any alternative disposition among the Contracting Parties. This agreement may not be rescinded or terminated so long as the Drainage Authority has bonds, notes or other obligations outstanding, unless provision for full payment of such obligations, by escrow or otherwise, has been made pursuant to the terms of such obligations.

Section 16. Fiscal Year. The fiscal year of the Drainage Authority shall be the calendar year.

Section 17. Principal Place of Business. The principal place of business of the Drainage Authority shall be established by the board of directors. Annually, on or before the first day of February of each year commencing in 2005 and within thirty (30) days following any change, the Drainage Authority shall file with the Colorado Division of Local Government the name of agent for service of process on the Drainage Authority and the address of the principal place of business of the Drainage Authority.

Section 18. Political Subdivision. Pursuant to CRS 29-1-204.2(4), as amended, the Drainage Authority shall be a political subdivision and public corporation of the state, separate from the Contracting Parties. It shall have the duties, privileges, immunities, rights, liabilities and disabilities of a public body politic and corporate. The provisions of Article 10.5 and Article 47 of Title 11, CRS, as amended, shall apply to monies of the Drainage Authority.

Section 19. Debt Not That of Contracting Parties. Pursuant to CRS 29-1-204.2(5), as amended, the bonds, notes and other obligations of the Drainage Authority shall not be the debts, liabilities or obligations of the Contracting Parties or parties that may be future Contracting Parties.

Section 20. Entire Agreement; Modification. This agreement contains the entire agreement and understanding between the

parties to this agreement and supersedes any other agreements concerning the subject matter of this transaction, whether oral or written. No modification, amendment, novation, renewal or other alteration of or to this agreement shall be deemed valid or of any force or effect whatsoever, unless stated in a writing duly authorized and executed by all of the Contracting Parties.

Section 21. No Third-Party Beneficiary Enforcement. It is expressly understood and agreed that enforcement of the terms and conditions of this agreement and all rights of action relating to such enforcement shall be strictly reserved to the Contracting Parties, and nothing contained in this agreement shall give or allow any claim or right of action whatsoever by any other person or entity not a party to this agreement. It is the express intention of the Contracting Parties that any person or entity other than the undersigned parties receiving services or benefits under this agreement shall be deemed an incidental beneficiary only.

Section 22. No Waiver of Immunity. No portion of this agreement shall be deemed to constitute a waiver of any immunities the parties or their officers or employees may possess or shall any portion of this agreement be deemed to have created a duty of care which did not previously exist with respect to any person not a party to this agreement. The parties hereto acknowledge and agree that no part of this agreement is intended to circumvent or replace such immunities under the Colorado Governmental Immunity Act, CRS 24-10-101, *et seq.*, as amended.

Section 23. Successors and Assigns. This agreement shall be binding upon and inure to the benefit of and be enforceable by the successors, assigns and legal representatives of the parties hereto.

Section 24. Severability. In the event that any of the terms, covenants or conditions of this agreement or their application shall be held invalid as to any person, corporation or circumstance by an court having competent jurisdiction, the remainder of this agreement and the application in effect of its terms, covenants or conditions to such person, corporation or circumstance shall not be affected thereby.

Section 25. Cooperation With Contracting Parties. In providing the services and facilities described in Section 3 above and in exercising any of the powers enumerated in Section 4 above, the board of directors of the Drainage Authority shall work cooperatively and in good faith with each of the Contracting Parties.

IN WITNESS WHEREOF, the parties hereto have set their hands and seals the day and year first above written.

CITY OF GRAND JUNCTION

TOWN OF PALISADE

By _____
James Spehar, Mayor

By _____
Geraldine Burdick, Mayor

ATTEST:

ATTEST:

Stephanie Tuin, City Clerk

Tina Darrah, Town Clerk

CITY OF FRUITA

COUNTY OF MESA

By _____
E. James Adams, Mayor

By _____
Doralyn B. Genova, Chairman

ATTEST:

ATTEST:

Margaret Steelman, City Clerk

Janice Ward, County Clerk

GRAND JUNCTION DRAINAGE DISTRICT

By _____
E. James Adams, President of
the Board of Directors

ATTEST:

Bill Christopher, Secretary of
the Board of Directors

DRAINAGE AUTHORITY BUDGET

March 24, 2004

CHARTER COMMITTEE - 2004

TASK	ELEMENT	ESTIMATE	REVENUE SOURCES
DEVELOP IGA	LEGAL FEES	\$2,000 additional	Contributions from "Contracting Parties" \$500 @
PROFESSIONAL STAFF	MTG PREP / GATHER INFO / ATTEND MTGS	\$15,000	"in-kind" contributions
PUBLIC EDUCATION	PART OF THE NPDES PHASE II AND DRAINAGE AUTHORITY	\$10,000	
JOINT MEETING	AGREE TO THE IGA, ANNOUNCE FORMATION OF DRAINAGE AUTHORITY	\$1,500	Shared by Grand Junction and Mesa County

DRAINAGE AUTHORITY - LATE 2004 INTO 2005

TASK	ELEMENT	ESTIMATE	REVENUE SOURCES
ORGANIZATION	CORPORATE FILINGS, BY-LAWS, OTHER LEGAL	\$8,500	ASSESSMENT TO CONTRACTING PARTIES Total \$150,000 Mesa County \$60,000, Grand Junction \$45,000, Drainage District \$25,000, Fruita \$15,000, Palisade \$5,000
ADMINISTRATION	OFFICE SPACE, DIRECTORS FEES, SECRETARIAL	\$10,000	
	CONTRACT ADMINISTRATION	\$20,000	
SHORT TERM GOAL SETTING RETREAT	FOR THIS YEAR	\$1,500	
	RATE STUDY	DEFENSIBLE	\$70,000
	SWMM & STANDARDS	PLANNING AND CONSTRUCTION TOOLS	\$10,000
PUBLIC EDUCATION	PART OF NPDES	\$20,000	
TELEPHONE HOT LINE	PART OF NPDES	\$10,000	
CIP	SET PRIORITIES	ESTIMATE COSTS	
PICK THE FIRST PROJECT	MUST HAVE ID'D BEFORE COLLECTING A FEE FOR SERVICE	NEEDS TO START BEFORE THE FIRST BILL GOES OUT	THE EFFECTED AGENCIES NEED TO FRONT SOME OF THE COSTS

Proposed Drainage Authority Boundary

