

**GRAND JUNCTION CITY COUNCIL  
WORKSHOP AGENDA**

**MONDAY, DECEMBER 13, 2004, 7:00 P.M.  
CITY HALL AUDITORIUM, 250 N. 5<sup>TH</sup> STREET**

**MAYOR'S INTRODUCTION AND WELCOME**

- 7:00 **COUNCILMEMBER REPORTS**
- 7:10 **CITY MANAGER'S REPORT**
- 7:15 **REVIEW FUTURE WORKSHOP AGENDAS** [Attach W-1](#)
- 7:25 **REVIEW WEDNESDAY COUNCIL AGENDA**
- 7:30 **RIVERFRONT COMMISSION CO-CHAIRS WILL DISCUSS THEIR REQUEST FOR INCREASED FUNDING:** Co-chairs Paul Jones and John Gormley will approach the City Council for funding for a Legacy Coordinator. [Attach W-2](#)
- 8:00 **LINCOLN PARK MASTER PLAN UPDATE:** Staff will present an overview of the work completed to date for the Lincoln Park Study and a summary of the current planning options being studied by the Consultant Team. [Attach W-3](#)
- 9:10 **CONTINUED DISCUSSION OF CABLE TV FRANCHISE:** Staff will request that City Council give direction on placing the question for a cable television franchise on the upcoming regular municipal election in April, 2005. [Attach W-4](#)
- 9:45 **ADJOURN**

This agenda is intended as a guideline for the City Council. Items on the agenda are subject to change as is the order of the agenda.

**Attach W-1  
Future Workshop Agenda**

# **CITY COUNCIL WORKSHOP AGENDAS**

***\* JANUARY 3, 2005 MONDAY 11:30 AM at Two Rivers Convention Center***  
***11:30 UPDATE ON VCB ACTIVITIES AND PROGRAMS by DEBBIE KOVALIK***  
***(VCB Board Invited)***

**JANUARY 3, 2005 MONDAY 7:00PM**

7:00 COUNCIL REPORTS, REVIEW WEDNESDAY AGENDA AND REVIEW  
FUTURE WORKSHOP AGENDAS  
7:25 CITY MANAGER'S REPORT  
7:30 SMOKING ORDINANCE UPDATE: ONE YEAR BEFORE FULL  
IMPLEMENTATION

***\* JANUARY 17, 2005 MONDAY 11:30 AM at Two Rivers Convention Center***  
***11:30 MEETING WITH THE GRAND JUNCTION HOUSING AUTHORITY***

**JANUARY 17, 2005 MONDAY 7:00PM**

7:00 COUNCIL REPORTS, REVIEW WEDNESDAY AGENDA AND REVIEW  
FUTURE WORKSHOP AGENDAS  
7:25 CITY MANAGER'S REPORT  
7:30 UPCOMING APPOINTMENTS TO BOARDS & COMMISSIONS  
7:40 JIM LOCHHEAD: UPDATE ON WATER ISSUES  
8:15 REVIEW YOUTH COUNCIL BYLAWS

***\* JANUARY 31, 2005 MONDAY 11:30 AM***  
***11:30 OPEN***

**JANUARY 31, 2005 MONDAY 7:00PM**

7:00 COUNCIL REPORTS, REVIEW WEDNESDAY AGENDA AND REVIEW  
FUTURE WORKSHOP AGENDAS  
7:25 OPEN

***\* FEBRUARY 14, MONDAY 11:30 AM***  
***11:30 OPEN***

**FEBRUARY 14, MONDAY 7:00PM**

7:00 COUNCIL REPORTS, REVIEW WEDNESDAY AGENDA AND REVIEW  
FUTURE WORKSHOP AGENDAS

7:25 CITY MANAGER'S REPORT

7:30 OPEN

**BIN LIST**

1. Traffic calming: Discussion of current policy
2. Neighborhood Program review
3. Jarvis Property Plan
4. Meeting with Downtown Development Authority Board
5. EMS Transport

**Department Presentations to City Council**

**2005**

|                 |                                |
|-----------------|--------------------------------|
| <b>February</b> | Code Enforcement               |
| <b>March</b>    | Golf Course/Recreation         |
| <b>April</b>    | Public Works Utilities – Water |

## Attach W-2 Riverfront Commission Request



### RIVERFRONT COMMISSION

P.O. Box 2477  
Grand Junction, Colorado 81502  
(970) 245-0045

Sponsors:  
Fruita  
Grand Junction  
Mesa County  
Palisade

September 7, 2004

Joe Stevens, Director  
Department of Parks and Recreation  
1340 Gunnison Ave.  
Grand Junction, CO 81501

Dear Joe,

Since 1996, the Colorado Riverfront partners have contracted the services of a Legacy Coordinator. The position was created to apply for and oversee Great Outdoors Colorado (GOCO) Legacy grants to the Colorado Riverfront Commission and its partners. For its first eight years, the coordinator position was held by Bob Cron. Since Bob's retirement from the position last December, Steve Moore has been the coordinator.

As the coordinator role developed, it became apparent that the position filled a need beyond its involvement with GOCO grants. The expansion of Riverfront activity along the entire length of the Colorado and Gunnison Rivers in Mesa County and the growth of the partnership to 14 members made it increasingly difficult for the Commission and the partners to be aware of all that was going on. Maintaining that awareness and communicating it to the Riverfront Commission and each of the partners became a central element of the coordinator job.

At present, the duties of the coordinator are:

- Schedule, organize and chair partnership meetings;
- Maintain frequent contact with the Riverfront Commission co-chairs and the Riverfront partners, assuring that all partners are fully informed as to the activities of the Riverfront Commission and each other;
- Serve as the Partnership's representative to similar groups and interested parties;
- Maintain familiarity with GOCO and other grant sources, their staffs and procedures;
- Seek out and inform the partnership of grant opportunities and assist them in the preparation of grant applications;
- Provide the Riverfront Commission and Foundation with analyses of issues confronting the Riverfront partnership and potential solutions, e.g., the problem of funding the maintenance of new trail segments.

Although it is now evident that no large scale GOCO funding will be available for Riverfront projects for several years, we believe the position needs to be sustained at its current level. The loss of a single, unified grant source has in fact made it even more important that we maintain a position that can be both a focal point for information exchange and a coordinator of the now disparate activities and funding requests that will be pursued.

The coordinator position has historically been funded by a combination of Legacy funds and contributions from the Riverfront partners. As the attached table shows, expenditures for the last four years in support of the position have averaged almost \$14,000 annually, of which about \$6,500 has been the combined annual commitment from the partners. The remainder came from a \$7,500 annual allocation from the GOCO Legacy grant. Our goal is to establish a funding base of \$15,000 annually to sustain the partnership coordinator position (now called the Greenway Coordinator). With no GOCO funding available, this would mean a substantial increase in the partners' contributions.

We urge you to consider the coordinator contract as you develop your budget for 2005 and respond positively. The City of Grand Junction has annually contributed \$1,250 toward the contract. Increasing that amount to \$3,500 would, with comparable increases from the other major partners, enable us to offset the loss of Legacy funding for the position. If you have any questions regarding the coordinator position or its funding or if you have any suggestions for addressing this need, please call us. Thanks in advance for your cooperation.

Sincerely,

  
Paul Jones  
Co-chair  
Colorado Riverfront Commission

  
John Gornley  
Co-chair  
Colorado Riverfront Commission

Attachment

Cc: Kelly Arnold

**Colorado Riverfront Commission  
Legacy Coordinator Position**

Proposed 2005 Funding Levels

|                | <u>Current Level</u> | <u>Addition</u> | <u>Proposed Level</u> |
|----------------|----------------------|-----------------|-----------------------|
| Fruita         | 1,000                | 1,250           | 2,250                 |
| Palisade       | 1,000                | 1,250           | 2,250                 |
| Grand Junction | 1,250                | 2,250           | 3,500                 |
| Mesa County    | <u>1,250</u>         | <u>2,250</u>    | <u>3,500</u>          |
| Subtotal       | 4,500                | 6,750           | 11,250                |
| State Parks    | 1,250                | 1,250           | 2,500                 |
| DOW            | 500                  | 500             | 1,000                 |
| GOCO           | <u>7,500</u>         | <u>-7,500</u>   | <u>-0-</u>            |
| Total          | 13,750               | 1,250           | 15,000                |

**Attach W-3  
Lincoln Park Master Plan**

**LINCOLN PARK STUDY UPDATE**

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The following is an overview of the work completed to date for the Lincoln Park Study and a summary of the current planning options being studied by the Consultant Team. Because of the heavy use it receives, the high regard with which it is held by the community and the number of important community facilities it contains, developing a consensus plan for Lincoln Park has been a demanding challenge. The residents and decision-makers of Grand Junction have provided the Consultant Team and City Staff with a wealth of insights and ideas regarding Lincoln Park, which we have worked diligently to incorporate into the current plan options.

The planning process employed for the Lincoln Park Study has been detailed and inclusive. Every effort has been made to reach out to the groups who use Lincoln Park on a regular basis, to the residents who live near the park and to all citizens of Grand Junction. This extensive public process included:

- Workshops with the Parks and Recreation Advisory Board (PRAB), Parks Improvements Advisory Board (PIAB) and an Intergovernmental Advisory Group made up of representatives from the City, Mesa State College and School District 51;
- Presentations to City Council;
- Stakeholder workshops;
- Two major open houses attended by over 200 residents;
- A review of existing conditions with Parks Staff and a number of planning and design sessions with City of Grand Junction Staff.

The primary purpose for presenting the current Lincoln Park planning options at this time is to collect feedback from Council and other advisory groups. It is also important to select a preferred option, or combination of options, that can be refined, studied in greater detail and then presented to the public. An analysis of the planning options for the Lincoln Park Golf Course follows the discussion of the concepts for the entire park. This summary also includes a review of the work completed to date and the public input process.

**CURRENT LINCOLN PARK STUDY OPTIONS**

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The ideas presented in the five initial concept plans presented previously and the results of the public process are reflected in the three current planning options that follow. Options A, B, and C are a direct result of the work completed earlier in the planning process. Some elements common to all of the plans include.

- The “Loop Road” has been eliminated in all concepts reflecting the strong support this idea received.
- One change the City should implement, regardless of the option chosen, is improved pedestrian safety on the sidewalks adjacent to 12<sup>th</sup> Street and North Avenue near the stadiums. Moving the west ticket booth, re-routing walks under bleachers or restructuring bleacher supports, adding retaining walls on the north end of the stadium, or a combination of these ideas would allow walks to be widened to 10’ - 12’. It is important to improve pedestrian circulation throughout the park, especially to create a strong north/south connection through the center of the park.
- Implementing the recommendations of the *2003 Sink Combs Dethlefs Plan* should be a priority, assuming the stadiums remain in their current locations. By necessity, this will also trigger parking lot improvements that will be required to secure the necessary planning approvals. The only factor that would modify this recommendation is if Option C is selected as the preferred option. Since Option C includes a new football/soccer/track stadium, additional study would be required to plan the new stadium and the improvements for Suplizio Field as a stand-alone facility.
- There were a number of public comments suggesting the community needs an indoor recreation center. Given the results of previous elections, this is probably not an issue that can be addressed in this study. However, two of the options include an “Activity Center”, which at this time is envisioned as a facility offering the community a better venue for the recreation programs and events now contained in The Barn. This new facility might be two to three times the size of The Barn and could include one to two gyms, meeting rooms, dance/aerobic class rooms, spaces for kids programs and exhibit space. Clearly, if this idea is carried forward, more detailed programming and schematic design studies will need to be completed.
- Some level of expansion of the pool area to add more water play elements such as sprays, zero-depth entry pools, lazy rivers, etc and possible upgrade to the pool to meet current competitive standards.

It should be noted that only one plan shows leaving golf as is, while the others show two options for changing golf. This was done to help decision makers understand the full range of options for improving Lincoln Park and is not to suggest that the Consultant Team favors changing golf at this time.

A “Pro/Con” analysis of each option is also provided to help evaluate the benefits each plan could provide the City of Grand Junction and its residents.

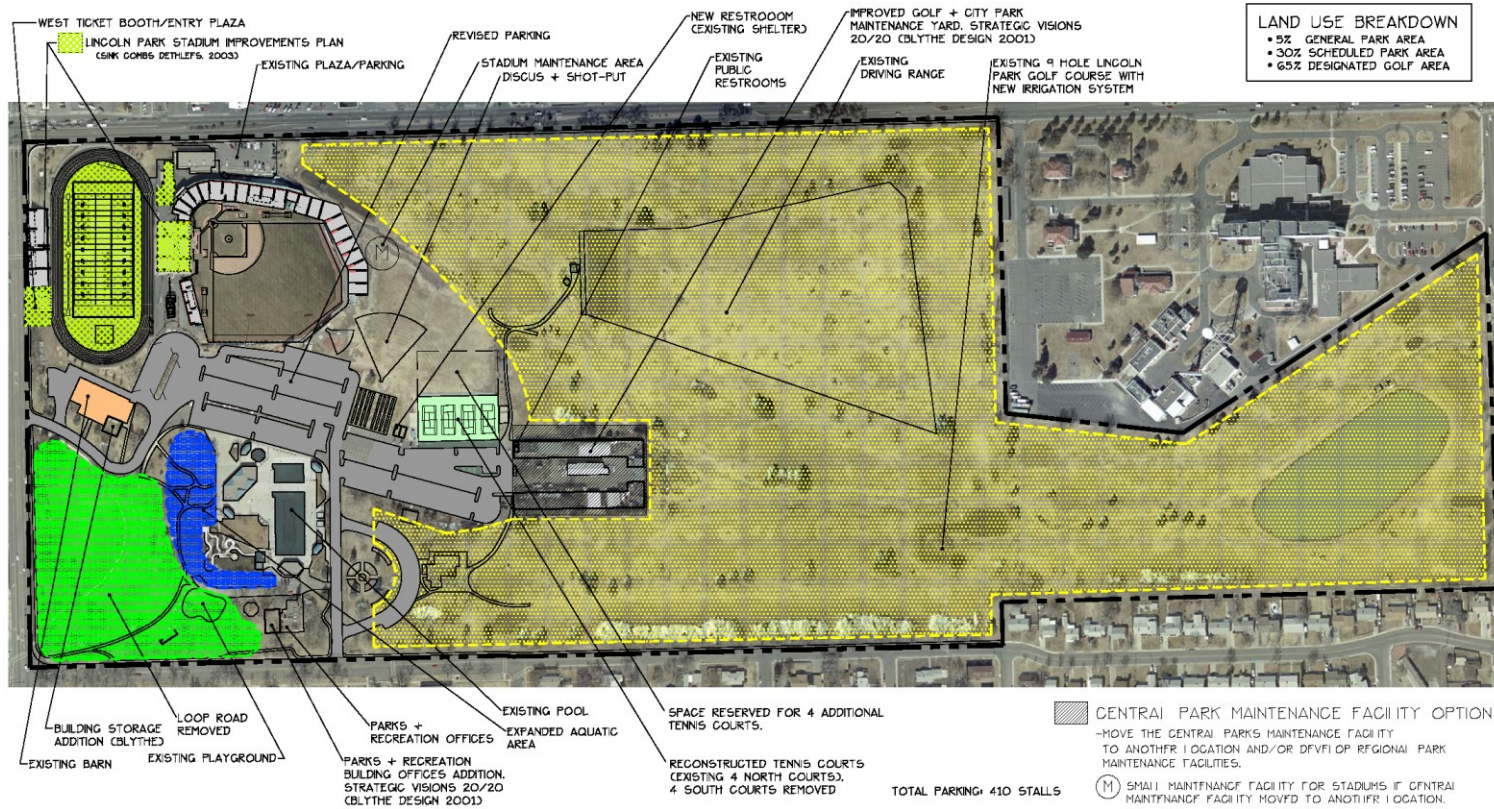


**Option A**

This option leaves most of Lincoln Park’s uses unchanged. From the golf community’s perspective, this is the preferred option and it is the least costly of the three options. The stadium improvements outlined in the 2003 plan can be implemented, parking can be improved and the tennis courts can be upgraded and moved out of the parking lot. However, correcting many of the problems identified during this planning process (golf course, maintenance facility, adding more open parkland) simply cannot be addressed with this option.

| <b>Option A</b>  |   |
|--|---|
| <b>PRO</b>   | <b>CON</b>  |
| <ul style="list-style-type: none"> <li>• Makes the fewest changes to the current park plan, and therefore, has the lowest overall cost.</li> </ul>   | <ul style="list-style-type: none"> <li>• By making few changes, many of the long-standing problems in Lincoln Park are not addressed (see below), especially the primary problem of too many uses in too small a space.</li> </ul>  |
| <ul style="list-style-type: none"> <li>• The Central Parking lot is brought up to code and circulation is better defined. Quantity of parking essentially unchanged.               <ul style="list-style-type: none"> <li>○ As old tennis court are upgraded, and moved north, additional parking is added and better access to the Maintenance Yard is provided.</li> </ul> </li> </ul> | <ul style="list-style-type: none"> <li>• Only two vehicular entry and exit points are provided.               <ul style="list-style-type: none"> <li>○ North/south pedestrian circulation through the park must still “squeeze” by Suplizio Field.</li> <li>○ The number of parking spaces will stay the same or decrease slightly.</li> </ul> </li> </ul>    |
| <ul style="list-style-type: none"> <li>• The “Loop Road” is eliminated creating a large, unbroken turf area in the southwest corner of the park and eliminating two substandard intersections.</li> </ul>  | <ul style="list-style-type: none"> <li>• Only basic improvements and a small expansion to “The Barn” are envisioned, leaving the community well short of addressing indoor recreation needs.               <ul style="list-style-type: none"> <li>○ Vehicular and service access continues to be poor, especially during major events.</li> </ul> </li> </ul> |
| <ul style="list-style-type: none"> <li>• The new medians added to the Central Parking Lot create a safer drop-off condition for the Moyer Pool.</li> </ul>   | <ul style="list-style-type: none"> <li>• Users of The Barn (including children) must cross a major park entry road to reach the “Loop’s” open turf area/Moyer Pool complex.</li> </ul>  |
| <ul style="list-style-type: none"> <li>• The golfer’s who use the Lincoln Park Golf Course on a regular basis will still have a full-size, 9-hole golf course available in the center of town that is well suited to older and beginner golfers.</li> </ul>  | <ul style="list-style-type: none"> <li>• Many problems with the Lincoln Park Golf Course cannot be addressed, e.g.:               <ul style="list-style-type: none"> <li>○ The driving range’s poor orientation, distance from the clubhouse and small size.</li> <li>○ Substandard setbacks from</li> </ul> </li> </ul>                                      |

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| <ul style="list-style-type: none"> <li>○ Badly needed irrigation system upgrades can be implemented as soon as funding is approved.</li> </ul>  | <p>adjacent uses and greens/tee boxes,</p> <ul style="list-style-type: none"> <li>○ Direction of play places adjacent uses and streets in range of errant shots from right-handed golfers (80% of golfers).</li> <li>○ Many golfers find the course boring and unchallenging.</li> </ul>   |
| <ul style="list-style-type: none"> <li>• The improvements to Stocker Stadium and Suplezio Field called for in the 2003 Sink-Combs Dethlefs plan (synthetic turf football field, restroom and concession upgrades, west entry ticket booth/plaza, seating upgrades, etc.) can be implemented as soon as funding is available.</li> </ul> | <ul style="list-style-type: none"> <li>• Problems with the stadiums not addressed: <ul style="list-style-type: none"> <li>○ Stocker Stadium’s turf area will not be large enough for soccer.</li> <li>○ The track is one lane short of regulation width.</li> <li>○ Discus and shot-put events are not close to track and field events.</li> </ul> </li> </ul> |
| <ul style="list-style-type: none"> <li>• Sidewalks west and north of Stocker Stadium need to be widened, especially for major events. Adding a retaining wall on the north side of the track and adjusting the walk or bleacher support on the northwest corner of the west bleachers would provide the space needed.</li> </ul>        | <ul style="list-style-type: none"> <li>• Very little additional open park land for general park use is created. <ul style="list-style-type: none"> <li>○ Only a small corner of open parkland in the southwest corner of the site is provided.</li> </ul> </li> </ul>  |
| <ul style="list-style-type: none"> <li>• The Parks and Recreation Administration Building is expanded.</li> </ul>   | <ul style="list-style-type: none"> <li>• No additional parking is provided for the Parks Administration Building</li> </ul>  |
| <ul style="list-style-type: none"> <li>• A small expansion / upgrade of the Parks Maintenance yard is proposed.</li> </ul>  | <ul style="list-style-type: none"> <li>• The Maintenance Yard is still very visible in the center of the park, takes up valuable park space, is in range of errant golf balls and still falls short of current needs due to constraints limiting expansion.</li> </ul>   |
| <ul style="list-style-type: none"> <li>• A restroom/shelter is proposed for the tennis and horseshoe area. <ul style="list-style-type: none"> <li>○ Moving replacement tennis courts north creates better spectator opportunities.</li> </ul> </li> </ul>   | <ul style="list-style-type: none"> <li>• Swimmers mentioned the need to increase the depth of the pool to meet current regulations, allowing the pool complex to host more and larger swim meets.</li> </ul>   |
| <ul style="list-style-type: none"> <li>• An area has been set aside on the west side of the Moyer Pool complex for additional water play features / expansion.</li> </ul>   | <ul style="list-style-type: none"> <li>• Few additional pedestrian path improvements are possible and the north-to-south pedestrian flow is difficult to improve.</li> </ul>   |



# LINCOLN PARK STUDY

## CITY OF GRAND JUNCTION, COLORADO

# OPTION A

WINSTON ASSOCIATES, CIAVONNE, ROBERTS AND ASSOCIATES, SINK COMBS DETHLEFS,  
RICHARD M. PHELPS, LTD - GOLF COURSE ARCHITECT'S, FOX HIGGINS TRANSPORTATION GROUP, THOMPSON LANGFORD CORPORATION, BURKE ASSOCIATES

**Option B**

In this option, a number of significant changes are studied for Lincoln Park. Some of these changes include:

- The golf course is changed from a full size 9-hole course to a par-3;
- Most of the land that was occupied by the golf course has been converted to open parkland to give Lincoln Park more of a “Central Park” character;
- A new North Avenue access and parking lot are shown;
- Changes have been made the west entry and The Barn relocated or reconstructed next to the Loop’s open turf area;
- The central parking lot is re-configured to deter short-cutting through the park to the north entry and to create opportunities for pedestrian movement;
- The Central Park Maintenance Facility has been moved out of the center of the park and replaced by smaller facilities dedicated to the Lincoln Park maintenance district (in a de-centralized “district” parks maintenance system), golf and the stadiums.

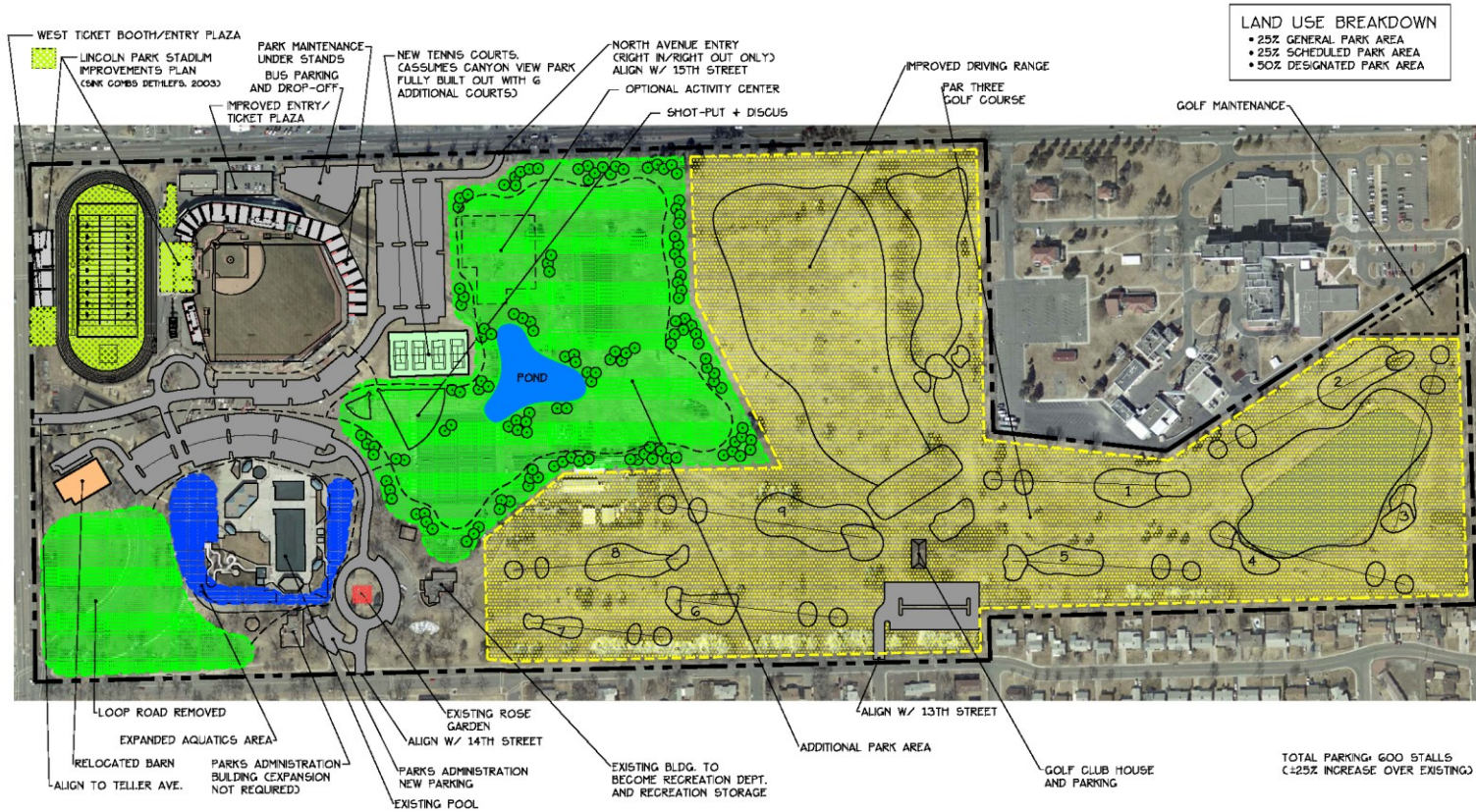
The stadium complex is largely unchanged as is the southwest corner of the park.

| <b>Option B</b>  |   |
|--|---|
| <b>PRO</b>   | <b>CON</b>  |
| <ul style="list-style-type: none"> <li>• The existing 9-hole golf course is converted to a par-3 course.               <ul style="list-style-type: none"> <li>○ Addresses setback issues from greens and tees and greatly reduces number of errant golf balls that will land on adjacent properties or public streets..</li> <li>○ Corrects the deficiencies in the driving range with proper orientation, length and relationship to the clubhouse (potential for night lighting as well - increased revenue)</li> <li>○ New clubhouse and small parking lot needed to support the facility</li> <li>○ Cost for the par-3 is approximately \$1,800,000, which includes a new golf clubhouse/parking. (as compared to the +/- \$800,000</li> </ul> </li> </ul> | <ul style="list-style-type: none"> <li>• The golfer’s who use the Lincoln Park Golf Course on a regular basis stated that:               <ul style="list-style-type: none"> <li>○ Only a full-size, 9-hole golf course will meet their needs and should remain available in the center of town.</li> <li>○ Tiara Rado will likely need to be expanded to 27 holes to meet current demand if Lincoln Park is converted to a par-3.</li> <li>○ The existing course is well suited to older and beginner golfers</li> <li>○ Older golfers who play at Lincoln Park feel Tiara Rado’s terrain changes are too difficult to walk.</li> <li>○ A par-3 course cannot be used to establish a golf handicap.</li> <li>○ Maintenance costs would not</li> </ul> </li> </ul> |

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| needed to keep existing course playable)  | significantly reduced by converting the course to a par-3 since the number of greens (the most maintenance-intensive golf element) remains the same.   |
| <ul style="list-style-type: none"> <li>• Converting the golf course from a 9-hole course to a par-3 opens up 17 acres of land for new park uses such as public open space/turf areas, picnic areas, ponds, trails an outdoor amphitheater and display gardens.</li> </ul>   | <ul style="list-style-type: none"> <li>• While not as costly as Option C, the cost of constructing a par-3 golf course, reconfiguring the parking and circulation and converting the area formerly occupied by golf to open park land will require careful financial planning and budget allocations by the City.</li> </ul>   |
| <ul style="list-style-type: none"> <li>• A second vehicular access (right turn-in/right turn out only) is added on North Avenue to alleviate congestion during major events.</li> </ul>   | <ul style="list-style-type: none"> <li>• A number of residents attending the public meetings did not want to see parking expanded in Lincoln Park.</li> </ul>  |
| <ul style="list-style-type: none"> <li>• The Central Parking lot is reconfigured and a central east/west median is added to: <ul style="list-style-type: none"> <li>○ Acts as a barrier for vehicles trying to shortcut north-to-south from Gunnison Avenue to North Avenue.</li> <li>○ Create a safe pedestrian corridor to the stadiums</li> <li>○ Soften the existing expanse of asphalt with landscaping.</li> <li>○ The Barn is relocated or reconstructed and a new entry drive that is properly aligned with Teller Avenue added as is a new drop-off area for the stadiums</li> </ul> </li> </ul> | <ul style="list-style-type: none"> <li>• Neighbors south of Lincoln Park are concerned about shortcutting through park if a North Avenue access is added. Wanted steps taken to discourage shortcutting. <ul style="list-style-type: none"> <li>○ Some Gunnison Avenue neighbors were concerned about adding a new parking lot access off 18<sup>th</sup> Street due to nearby schools.</li> </ul> </li> </ul> |
| <ul style="list-style-type: none"> <li>• A new parking lot is added east of Suplizio Field to reduce amount parking in the center of the park.</li> </ul>   | <ul style="list-style-type: none"> <li>• Cars in the park lot closest to the south side/right field fence of Suplizio Field could still be hit by home run balls.</li> </ul>   |
| <ul style="list-style-type: none"> <li>• All Parking lots are brought up to code with the number of parking spaces increased by approximately 25% over current levels.</li> </ul>   | <ul style="list-style-type: none"> <li>• Some attending the public meeting wanted the Loop Road eliminated, but replaced with a pedestrian path in the same location.</li> </ul>   |
| <ul style="list-style-type: none"> <li>• The improvements to Stocker Stadium and Suplizio Field called for in the 2003 Sink-Combs Dethlefs plan (synthetic turf football field,</li> </ul>  | <ul style="list-style-type: none"> <li>• Some problems with the stadiums not addressed: <ul style="list-style-type: none"> <li>○ Stocker Stadium’s turf area will not be large enough for soccer.</li> </ul> </li> </ul>   |

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| <p>restroom and concession upgrades, west entry ticket booth/plaza, seating upgrades, etc.) can be implemented as soon as funding is available.</p> <ul style="list-style-type: none"> <li>○ Parking north of Suplizio Field is improved to accommodate buses for games and special events.</li> <li>○ A north-side pedestrian plaza is added for the north entrance/ticket booth for the stadiums.</li> </ul>   | <ul style="list-style-type: none"> <li>○ The track is one lane short of regulation width.</li> <li>○ Discus and shot-put events are separate from the track and field events.</li> </ul>  |
| <ul style="list-style-type: none"> <li>● Sidewalks west and north of Stocker Stadium need to be widened. Adding a retaining wall on the north side of the track and adjusting the walk or bleacher support on the northwest corner of the bleachers would provide the space needed.</li> </ul>   | <ul style="list-style-type: none"> <li>● The tennis community wanted to keep as many tennis courts as possible in town and in Lincoln Park. <ul style="list-style-type: none"> <li>○ Some tennis players thought the Option B location was too close to the stadiums and would be too noisy.</li> </ul> </li> </ul> |
| <ul style="list-style-type: none"> <li>● Additional parking is provided for the Parks Administration Building</li> </ul>   | <ul style="list-style-type: none"> <li>● Swimmers mentioned the need to increase the depth of the pool to meet current regulations, allowing the pool complex to host more and larger swim meets.</li> </ul>  |
| <ul style="list-style-type: none"> <li>● The Barn is moved or re-constructed south of the new west entry drive and linked to the Loop's open turf area. Parking and service access improved.</li> </ul>  |   |
| <ul style="list-style-type: none"> <li>● The existing Central Parks Maintenance Facility is shown as being relocated to eliminate conflicts, allow for Maintenance expansion and open up valuable park land. Options include: <ul style="list-style-type: none"> <li>○ Split the maintenance facility into two locations, one associated with the golf course and a new facility near Suplizio for the stadiums, Lincoln Park and other City parks.</li> <li>○ Create a "District" parks maintenance system with regional facilities serving designated areas of the city and</li> </ul> </li> </ul> |   |

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| <p>keeping only golf, stadium and the central district's maintenance facilities in Lincoln Park.</p> <ul style="list-style-type: none"> <li>○ Construct a new Central Parks Maintenance Facility in another location in the city</li> </ul>                      |  |
| <ul style="list-style-type: none"> <li>● The "Loop Road" is eliminated creating a large, unbroken turf area in the southwest corner of the park and eliminating two substandard intersections.</li> </ul>  |  |
| <ul style="list-style-type: none"> <li>● An area has been set aside on the west and east sides of the Moyer Pool complex for additional water play features / expansion. <ul style="list-style-type: none"> <li>○ Drop-off area improved.</li> </ul> </li> </ul> |  |
| <ul style="list-style-type: none"> <li>● Four new tennis courts are shown under the assumption that Canyon View Park's complex is built-out to 12 courts and becomes the central tennis facility.</li> </ul>   |  |
| <ul style="list-style-type: none"> <li>● The old golf clubhouse is converted to offices for the Recreation Department, likely eliminating the need for expanding the current Parks Administration Building</li> </ul>  |  |
| <ul style="list-style-type: none"> <li>● If moving/reconstructing The Barn is not feasible, this plan leaves room for a larger Activities Center east of the proposed North Avenue Parking lot.</li> </ul>   |  |



# LINCOLN PARK STUDY

## CITY OF GRAND JUNCTION, COLORADO

# OPTION B

WINSTON ASSOCIATES, CIAVONNE, ROBERTS AND ASSOCIATES, SINK COMBS DETHLEFS,  
 RICHARD M. PHELPS, LTD - GOLF COURSE ARCHITECT'S, FOX HIGGINS TRANSPORTATION GROUP, THOMPSON LANGFORD CORPORATION, BURKE ASSOCIATES



**Option C**

Option C includes many of changes studied in Option B, but also illustrates a number of new concepts.

- As in Option B, a new North Avenue access and parking lot is shown, changes have been made to the west and south entries and the central maintenance facility has been moved.

New features shown in Option C include:

- The golf course is changed from a full size 9-hole course to a Golf Learning and Practice Center;
- Stocker Stadium has been replaced by a new football/soccer/track stadium in the center of the park;
- A landscape buffer/open space and parking for Suplizio Field have been added in place of the football stadium in the northwest corner;
- Most of the 30 acres that were occupied by the golf course have been converted to open parkland to give Lincoln Park more of a “Central Park” character;
- The Barn has been replaced by a larger “Activities Center”;
- A new tennis court complex is shown in place of the central maintenance facility;
- A limited-use connector road is shown for special events traffic and bus parking, but which could normally closed to deter short-cutting through the park to the north entry.

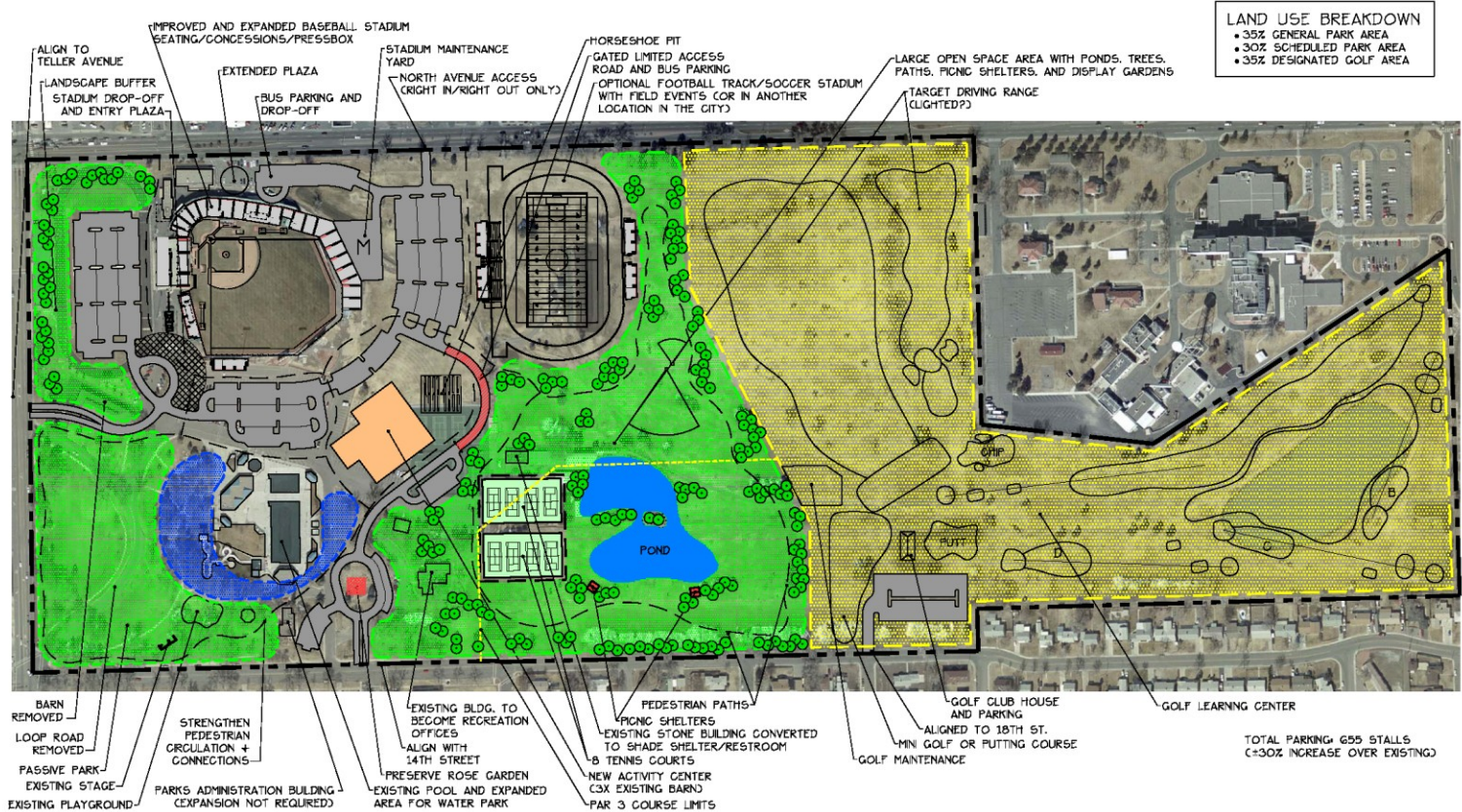
| <b>Option C</b>  |  |
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| <b>PRO</b>   | <b>CON</b>   |
| <ul style="list-style-type: none"> <li>• The existing 9-hole golf course is converted to a Golf Learning Center.               <ul style="list-style-type: none"> <li>○ A Learning Center gives youth a chance to learn to play golf without being pressured to keep pace with experienced golfers on a full-size course and could be used for Mesa State, School District or City Recreation classes/programs.</li> <li>○ Addresses setback issues from greens and tees and greatly reduces number of errant golf balls that will land on adjacent</li> </ul> </li> </ul> | <ul style="list-style-type: none"> <li>• The golfer’s who use the Lincoln Park Golf Course on a regular basis stated that:               <ul style="list-style-type: none"> <li>○ Only full-size, 9-hole golf course will meet their needs and should remain available in the center of town.</li> <li>○ Tiara Rado will likely need to be expanded to 27 holes to meet current demand if Lincoln Park is converted to a Learning Center.</li> <li>○ The existing course is well suited to older/beginner golfers</li> </ul> </li> </ul> |

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| <p>properties or public streets.</p> <ul style="list-style-type: none"> <li>○ Corrects the deficiencies in the driving range with proper orientation, length and relationship to the clubhouse.</li> <li>○ New smaller clubhouse and small parking lot needed to support the facility</li> <li>○ Cost approximately \$1,400,000. (as compared to the +/- \$800,000 needed to keep existing course playable)</li> <li>○ Golfers of all abilities could use the facility. Even skilled golfers would use the practice facilities and would probably play the practice holes to work on particular aspects of their game in real conditions or when time is not available for 9 or 18 holes.</li> <li>○ Because of the smaller area and fewer greens, the costs for maintenance would be reduced approximately 40%, giving the Learning Center a better chance of meeting expenses.</li> </ul> | <ul style="list-style-type: none"> <li>○ Older golfers who play at Lincoln Park feel Tiara Rado's terrain changes are too difficult to walk.</li> </ul>   |
| <ul style="list-style-type: none"> <li>● Converting the golf course from a 9-hole course to a Learning Center opens up a <u>significant</u> amount of land (30 acres) for new park uses such as public open space/turf areas, picnic areas, ponds, trails, an outdoor amphitheater, display gardens, an Activities Center and a new football/soccer/track stadium</li> </ul>  | <ul style="list-style-type: none"> <li>● Option C would carry the highest cost of the three options due to the cost of demolishing Stocker Field, constructing a new football/soccer/track stadium, the Golf Learning Center and Activity Center, as well as reconfiguring the parking and circulation and converting the area formerly occupied by golf to open park land. Implementing the improvements may require partnering with Mesa State and the School District as well as careful financial planning and budget allocations by the City.</li> </ul> |
| <ul style="list-style-type: none"> <li>● A second vehicular access (right turn-in/right turn out only) is added on North Avenue to alleviate congestion during major events.</li> </ul>   | <ul style="list-style-type: none"> <li>● A number of residents attending the public meetings did not want to see parking expanded in Lincoln Park.</li> </ul>   |
| <ul style="list-style-type: none"> <li>● Parking and circulation has been</li> </ul>  | <ul style="list-style-type: none"> <li>● Neighbors south of Lincoln Park are</li> </ul>   |

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| <p>reconfigured:</p> <ul style="list-style-type: none"> <li>○ The Central Parking Lot has been scaled back by almost two-thirds.</li> <li>○ Gaps have been left in the parking areas to create safe pedestrian corridors to Suplizio Field from the rest of the park.</li> <li>○ A new parking lot is added east of Suplizio Field to reduce amount of parking in the center of the park and add parking next to the new football/soccer stadium.</li> <li>○ The Barn is replaced and a new west entry drive that is properly aligned with Teller Avenue added as is a new drop-off area for Suplizio Field.</li> <li>○ A gated, limited access road connecting the south parking and drives to the stadiums' parking and drives would be only opened during special events or when needed as bus parking.</li> <li>○ The new parking lot shown in the northwest corner of the site could be used by Mesa State students.</li> </ul> | <p>concerned about shortcutting through park if a North Avenue access is added. Wanted steps taken to discourage shortcutting.</p> <ul style="list-style-type: none"> <li>○ Some Gunnison Avenue neighbors were concerned about adding a new parking lot access off 18<sup>th</sup> Street due to nearby schools.</li> </ul> |
| <ul style="list-style-type: none"> <li>● Parking north of Suplizio Field is improved to accommodate buses for games and special events</li> </ul>  | <ul style="list-style-type: none"> <li>● A number of residents suggested going to structured parking in Lincoln Park to free up more parkland.</li> </ul>  |
| <ul style="list-style-type: none"> <li>● All Parking lots are brought up to code with the total number of parking spaces increased by approximately 30% over current levels.</li> </ul>  | <ul style="list-style-type: none"> <li>● Some attending the public meeting wanted the Loop Road eliminated, but replaced with a pedestrian path in the same location.</li> </ul>   |
| <ul style="list-style-type: none"> <li>● The improvements to Suplizio Field called for in the 2003 Sink-Combs Dethlefs plan (restroom and concession upgrades, seating upgrades, etc.) can be implemented as soon as funding is available.</li> <li>○ Improvements to the concessions</li> </ul>   | <ul style="list-style-type: none"> <li>● Swimmers mentioned the need to increase the depth of the pool to meet current regulations, allowing the pool complex to host more and larger swim meets.</li> </ul>   |

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| <p>and restrooms would need to be re-examined since Suplizio Field would no longer be sharing facilities with football/track</p> <ul style="list-style-type: none"> <li>○ A north-side pedestrian plaza is added for the north entrance/ticket booth for the stadiums.</li> </ul>  |  |
| <ul style="list-style-type: none"> <li>● With Stocker Stadium relocated to the east, a significant landscape buffer can be added at the northwest corner of the park and sidewalks along 12<sup>th</sup> Street and North Avenue widened as needed to accommodate pedestrian volumes.</li> </ul>   |  |
| <ul style="list-style-type: none"> <li>● Additional parking is provided for the Parks Administration Building</li> </ul>   |  |
| <ul style="list-style-type: none"> <li>● The Barn is replaced by an Activities Center that would replicate and expand on the uses currently housed in The Barn (e.g. one to two regulation gyms, facilities for recreation programs, exhibit and meeting space and dance/aerobics class rooms.) <ul style="list-style-type: none"> <li>○ Locating the Activity Center next to the Moyer Pool and tennis courts allow it to serve as a support facility for both uses.</li> </ul> </li> </ul>   |  |
| <ul style="list-style-type: none"> <li>● The existing Central Parks Maintenance Facility is shown as being relocated to eliminate conflicts, allow for Maintenance expansion and open up valuable park land. Options include: <ul style="list-style-type: none"> <li>○ Split the maintenance facility into two locations, one associated with the golf course and a new facility near Suplizio for Lincoln Park and other City parks.</li> <li>○ Create a “District” parks maintenance system with regional facilities serving designated areas of the city and keeping only golf, stadium and the central district’s maintenance</li> </ul> </li> </ul> |  |

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| <p>facilities in Lincoln Park.</p> <ul style="list-style-type: none"> <li>○ Construct a new Central Parks Maintenance Facility in another location in the city</li> </ul>  |  |
| <ul style="list-style-type: none"> <li>● The “Loop Road” is eliminated creating a large, unbroken turf area in the southwest corner of the park and eliminating two substandard intersections.</li> </ul>  |  |
| <ul style="list-style-type: none"> <li>● An area has been set aside on the west and east sides of the Moyer Pool complex for additional water play features / expansion. <ul style="list-style-type: none"> <li>○ Drop-off area improved.</li> </ul> </li> </ul> |  |
| <ul style="list-style-type: none"> <li>● Eight new tennis courts are shown along with a shade structure/ restroom.</li> </ul>  |  |
| <ul style="list-style-type: none"> <li>● The old golf clubhouse is converted to offices for the Recreation Department, likely eliminating the need for expanding the current Parks Administration Building.</li> </ul>   |  |



# LINCOLN PARK STUDY

## CITY OF GRAND JUNCTION, COLORADO

# OPTION C

WINSTON ASSOCIATES, CIAVONNE, ROBERTS AND ASSOCIATES, SINK COMBS DETHLEFS,  
 RICHARD M. PHELPS, LTD - GOLF COURSE ARCHITECT'S, FOX HIGGINS TRANSPORTATION GROUP, THOMPSON LANGFORD CORPORATION, BURKE ASSOCIATES

### *Golf Course Options Summary*

As a part of developing the planning options for Lincoln Park, Richard M Phelps, LTD – Golf Course Architects' (RMP) has developed a summary of the planning effort for the Lincoln Park Golf Course, the options that have been studied for the course and examination of the golf course within the larger park site. While RMP has over seventy years of collective experience in the golf course industry, they do not specialize in the economic analysis of new or existing golf facilities. In addition, completing a detailed market and operational analysis of the existing course and potential redevelopment options was beyond the scope of this phase of the Lincoln Park Study. Therefore, opinions rendered in this summary should be considered preliminary in nature and indicators of potential trends rather than specific projections. They are based upon the data made available to RMP from the City of Grand Junction and THK Associates, Inc. in Denver. RMP also utilized additional industry guidelines for estimating construction costs and operating costs based on what they have observed in their own projects, as well as those of others completed recently in Colorado and surrounding states. RMP strongly recommends that the City complete full market and operational studies prior to undertaking any major changes to the golf course at Lincoln Park, especially where a change in the type of course is being considered.

The golf course options that have been presented as part of the overall Lincoln Park Study have been summarized in previous sections of this document. As such, there is no need to revisit that planning information unless there is specific information that pertains to this analysis.

Looking at the golf market as a whole, it has been relatively well publicized that the industry is somewhat depressed. Most estimates by golf economists show a decrease in golf rounds played nationally of about 8-10% for the period from 1999-2003. The numbers at Lincoln Park are approximately 20% for that same period. The larger decreases in the number of rounds played at Lincoln Park from 1999-2003 are most likely due to the recent competition that has entered the market in Grand Junction. Exact numbers are very difficult to compare because there are new courses opening annually during that period. Other factors that may have reduced the number of rounds is the perception that, when compared to newer courses, the Lincoln Park course is flat and not very challenging. In addition, many players prefer to play 18 holes without repeating the same nine holes. By comparison the number of rounds played at Tiara Rado has decreased by approximately 13% from 2000 to 2004.

Within the financial data provided by the City of Grand Junction, RMP focused primarily on the overall revenues and expenses. Separate numbers from the golf course, driving range and pro shop are available, but are difficult to compare due to the

management of some of these facilities being taken over by the City from concessionaires in recent years. The bottom line is that the Lincoln Park Golf Course's revenues do not cover the operating expenses and that the facility must be subsidized by borrowing back \$40,000 to \$70,000 per year from the Expansion Fund to cover operations. The expansion fund is in essence is the City's capitol improvements fund for both Tiara Rado and Lincoln Park, to which both courses contribute a portion of each pass or green fee.

Tying into the economic data above, RMP examined four options for golf during the Lincoln Park Study process: The "no impact" option, an executive course, a par-3 course and a learning center.

The "no impact" option is relatively simple. The golf course would exist as it has for decades, with the only change being the need to replace the antiquated irrigation system. It should be noted that the course's irrigation system is 30 years old. By comparison, the Bookcliff Country Club's irrigation system has seen major renovations three times over the last 30 years. The PVC pipe is decaying and the increase in pressure gained with each repair often causes other leaks elsewhere in the system. In addition, parts are no longer available for the old irrigation heads and the system is less efficient as each head is replaced by new equipment, since the new and old heads do not have the same performance characteristics. The issue of the golf course "losing" money will only be exacerbated by the addition of approximately \$800,000 in capital expense needed for the irrigation system. The shortfalls that have been experienced in the past few years would need to be overcome by increasing revenues (cost to play) or by reducing expenses, or both. It is likely that a new irrigation system will help to reduce expenses by decreasing the labor expense, but the reduction would be minimal overall. No reduction in water cost will be realized, since the golf course is irrigated at little cost with raw water from the City's existing water rights.

The executive course option was essentially eliminated from consideration because of the cost of conversion from a full size 9-hole course to an executive layout, because it would not reduce maintenance costs and it only gained eight acres of additional land for other park uses. In addition, many of the safety issues that are present on the existing golf course could not be adequately addressed with an executive layout. The consensus was that the City would likely take on greater liability by reconfiguring the existing course without meeting current safety guidelines than it would by leaving the course as is. The argument in favor of an executive course is that it would still allow USGA handicaps to be kept at Lincoln Park. Executive courses can be sloped and rated to allow a GHIN handicap just like any regulation course can. On the other hand, RMP did not know of any par-3 courses that have slopes and ratings.



The third option is a par-3 course. The par-3 layout would require a capital expenditure of approximately \$1.8 million to convert the existing course, including a new clubhouse, parking lot, utilities, etc. The resulting land used by the golf course would be decreased by almost 27%, but that does not mean a 27% reduction in maintenance expense. Since the highest percentage of the maintenance expense budget is the greens (on a per acre basis), and a par-3 does not reduce the area of the greens, the overall maintenance expenses would likely only decrease approximately 8-10%. Then the question is what will happen to the revenues? Based RMP's past experience in the industry and readily available data relative to other par-3 courses in Colorado, Lincoln Park would likely see a drop in the number of rounds played of approximately 25%. Of the "stand-alone" par-3 courses in the THK Associates' information (3 courses out of 12), the average number of 9-hole rounds was 31,000 per year. For reference, Lincoln Park has played an average of 41,500 9-hole rounds the past two years, but is expected to fall below that in 2004. As such, again assuming that the average weighted green fee would only be decreased slightly, the net revenue would be expected to be 25-28% lower than it is currently. With a 25% decrease in revenue and a 10% decrease in maintenance expenses, there is serious doubt that a detailed pro forma could show a positive cash flow. As such, the "value" of converting the Lincoln Park Golf course into a par-3 course would have to rest solely on the benefit of creating approximately 17 acres of additional park land for other park uses.

The fourth option that was presented as part of the planning process involved the creation of a golf learning/practice center. The general design concept included four golf holes that could be set up in a variety of ways to provide realistic practice experience for any skill level of player. It also included a large practice facility with a driving range, putting green, short-game facility and possibly a putting course. Depending on the final design of this facility, the construction costs should be approximately \$1.4 million. The greatest difficulty with an analysis of the financial performance at this type of facility is that there are very few comparables from which to gather data. The learning center would occupy approximately 34 acres, which frees up approximately 30 acres for other park uses. The golf course would only have five or six greens, which would significantly reduce the maintenance costs, likely on the order of 40% less than the existing course. The driving range revenue would likely increase due to the range being larger, closer to the clubhouse and possibly lighted for night play. Predicting the revenue from the practice holes, lesson programs and other uses is a bit of an unknown. Through some discussion with Doug Jones, the City's Golf Superintendent, one possible fee and operation structure was to have the golfers pay an hourly fee for use of the learning center. RMP agrees that this could be a great way to manage such a facility, but, once again, they knew of no examples where such a concept has been tested.

Using some simple hypothetical numbers may provide some “points of discussion” to further the process. It would be reasonable to assume that the City could average from 20,000 to 30,000 visits to the learning center facility annually. If you also assume that each visitor will average \$10.00 of spending (\$8.00/hour), you can program \$300,000 in revenue at the high end. This assumption would include the driving range, practice areas and practice holes, but not lesson programs or pro shop revenue. The goal would be to have the lesson programs/pro shop be self sufficient either by leasing out that portion to a private enterprise, or by running the programs separately through the City’s recreation department. In either case, the teaching professional(s) would be paid directly by the lesson programs, soft good sales, grants or other revenues generated by the lesson program or pro shop sales.

If, in fact, the maintenance budget were to be reduced by 40% from where it is today, the expense side of the ledger would be approximately \$235,000 for the facility. You would also have expenses associated with the driving range, but these should be less than \$30,000 annually. Please remember that the pro shop merchandise and lesson programs would be accounted separately. As such, the hypothetical golf learning center should be profitable, or at least self sufficient, not including debt service payments for the initial capital construction. Based on the rough analysis, high-end of the revenue projection would leave \$35,000 for annual debt service payments, which would most likely be needed to subsidized the additional City funding to cover the debt service on the \$1.4 million construction costs. Please note that this hypothetical financial picture is being provided using multiple assumptions that have few comparables within the golf industry. RMP has used comparative data where possible, but the information available is very limited.

If there are any meaningful conclusions to be reached through this process, one could say that leaving the golf course alone or converting it to a learning center are likely the two most viable options. The problem with leaving the golf course alone is that the City would still have to replace the irrigation system at a cost of approximately \$800,000 and that long-standing safety issues could not be properly addressed. In addition, the debt for the irrigation improvements would have to be covered somewhere within the budget, which is already operating at a deficit.

Arriving at a firm recommendation for the future of the Lincoln Park Golf Course is difficult at best without a detailed market/operational analysis. It is strongly recommend a comprehensive market study, done by an economic research firm with extensive golf course experience, which looks at both of the City golf courses and includes information related to all options within the master plan scope, as well as other options that are available at Tiara Rado.

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## Work Completed To Date

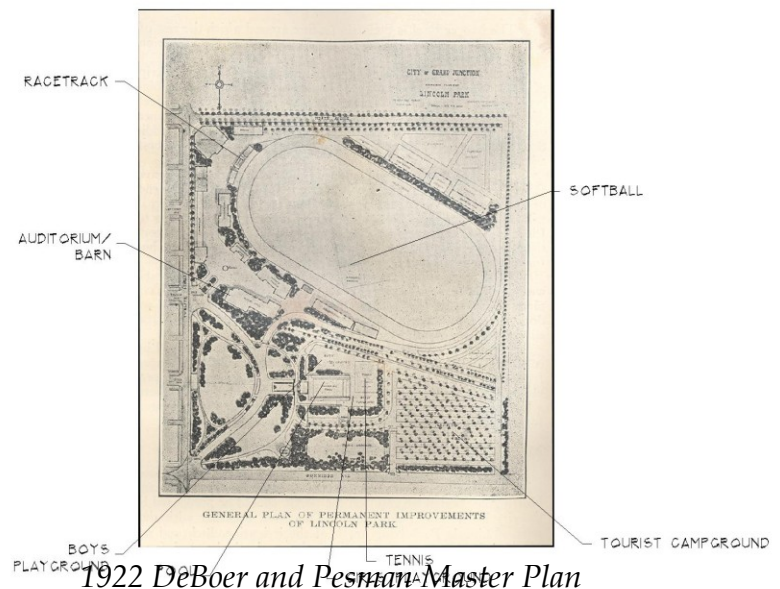
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In order to understand how the current Lincoln Park Study Options were developed, we felt it would be helpful to provide a brief overview of the work completed to date.

### Debrief with Parks Maintenance Staff/ Existing Conditions Analysis

Prior to beginning any planning studies for Lincoln Park, the Consultant Team undertook a detailed analysis the existing conditions in and around Lincoln Park. This analysis included a half-day debriefing with City of Grand Junction staff members from Parks Maintenance and Design, Golf, Traffic and Public Works. The goal was to gain a complete understanding of the condition of the park and its facilities and how it is being used by the residents of Grand Junction. Following the debriefing with Staff, the Consultant Team completed a detailed independent analysis of the park looking at:

- Traffic patterns around the park, parking and site access for vehicles, bicyclists and pedestrians including on-site reviews of how the park functions during a major event (the Junior College World Series).
- The history of the development of Lincoln Park from 1917 to present day.
- The site's current organization and the relationship of uses to each other.
- The park's infrastructure (water, sewer, drainage and electrical services).
- The status of the Lincoln Park golf course.
- The status of major facilities such as the Central Parks Maintenance Facility, the Barn, Moyer Pool, tennis courts, horseshoes and general park uses.



1922 DeBoer and Pesman Master Plan

This analysis was summarized in the “Existing Conditions Summary” which was previously submitted to staff and which will be included in the final report. This background research and analysis has been used to help guide the development of planning options for the park.

Workshops with the PRAB, PIAB, the Intergovernmental Advisory Group and City Council were conducted to understand their issues and concerns regarding Lincoln Park.

### **Stakeholder Meetings and First Open House**

On two consecutive nights, a stakeholders workshop (July 21<sup>st</sup>) and a public open house (July 22<sup>nd</sup>) were held in the Barn. Both meetings were well attended and structured so individuals could record their comments on Post-It notes at stations dedicated to various issues or facilities in the park (e.g. pedestrian and vehicular circulation, The Barn, Horseshoes, the Golf Course, etc.) In addition, preliminary ideas to improve or update Lincoln Park were provided. These included concepts such as: converting the Loop Road to turf, adding a third vehicular access on North Avenue, reducing the scale of the Golf Course, etc. The significant trends that came out of the open houses were:

- The Gunnison Avenue neighborhood was very concerned about traffic and any upgrades that could generate more traffic in, or through the park.
- There was a high level of support for reducing the scale of the golf course to create more open space in Lincoln Park. These comments appeared to come from the neighbors or stakeholders representing groups other than the regular Lincoln Park golfers.
- Facility specific users such as the swim clubs, groups who rent The Barn, horseshoe players, etc. suggested improvements they wanted to see for the facility they used.
- There was strong support for demolishing the Loop Road and replacing it with turf to create a larger, continuous green space in the southwest corner of the park

The Consultant Team and Parks Staff used the comments and feedback collected at the open houses to begin the development of concepts illustrating potential improvement options for Lincoln Park. Summaries from the two initial open houses will be included in the final report.

### **Design Charrettes and Development of Preliminary Concepts**

Following the July Open Houses, the Consultant team completed a summary of the input received and used that input, along with comments and suggestions from Parks staff, to develop three preliminary concepts. These concepts ranged from making very few changes to Lincoln Park's program and uses (Concept 1) to plans suggesting more dramatic changes such as converting the golf course to a par-3 course or a golf learning center, or rebuilding Stocker Stadium in a new Lincoln Park location and expanding it to accommodate soccer (Concepts 2 and 3). These concepts were developed in design charrettes with Parks Design and Maintenance Staffs and the Consultant Team.

The three initial concepts were presented to the Parks and Recreation Advisory Board, the Intergovernmental Advisory Group and City Council. Comments and suggestions collected from those presentations were used to develop two new planning options (Concepts 4 and 5), which contained either new ideas not shown on the first three concepts or new combinations of program elements. As these five concepts have been previously reviewed by Council, presented to the public and posted on the City's web site; they have not been included in this update.

### **The 2<sup>nd</sup> Open House / Public Feedback**

A second Open House was held at the Two Rivers Convention Center on October 26<sup>th</sup>. Parks staff invited all individuals and groups who attended the previous open houses and members of the Lincoln Park Golf Club as well as mailing postcards to a wide radius of homes around Lincoln Park. During the four-hour open house, approximately 150 residents or individuals with an interest in Lincoln Park reviewed the five concept plans and a PowerPoint slideshow on the plans. Individuals were encouraged to record their comments on Post-It notes, which were then placed on the relevant plan, or on comment sheets and posters. In many cases, the comments and suggestions received were similar to the first open houses; however, there were notable differences:

- There was very strong representation from individuals and golf club members who play the Lincoln Park Golf Course on a regular basis. This factor was clearly reflected in the public comments in a number of ways:
  - A large number of the comments received were to the effect of "Keep the Lincoln Park Golf Course as is!" This somewhat contradicted the input received at the first public meeting where support for keeping the golf course as is was lukewarm at best. However, it is a clear reflection of the strength of numbers the Lincoln Park golf community turned out at this meeting.
  - Where attendees expressed a preference for a particular concept, Concept #1 was the clear leader, since it was the only concept that kept the golf course intact. It's not clear if this represents strong support for all of the ideas presented in Concept #1, or just the regular golfers reinforcing their desire to keep the course a full 9-holes.
  - When all comments relating to *just* the Lincoln Park Golf Course were extracted and compared, there was still strong support for keeping the golf course as is, however there were nearly as many who suggested changing the course in some fashion. It is probably safe to say that if all of the residents of Grand Junction were polled, one would see strong very support for keeping things as they are from those individuals who play the Lincoln Park course on a regular basis and support for reducing the course to add more parkland/public open space to Lincoln Park from the rest of the

community. Without a statistically based survey, it is not possible to say what percentage of the population would be on which side of the issue. The only clear indicator available at this time is that the number of rounds played at Lincoln Park is declining at a rate that is nearly double the national average.

- Again there was strong support for eliminating the Loop Road to create a large open green space in the southwest corner of the park.
- There was strong support for keeping Lincoln Park “green”. Maintaining or increasing the amount of open space was frequently mentioned. This is somewhat problematic, as there is also a need to increase/improve parking and vehicular access for major events.
- One surprising result from all of the open houses was that none of the residents surrounding Lincoln Park complained about park users parking in front of their homes. In fact, a number of individuals who identified themselves as living south of Lincoln Park were opposed to increasing parking in the park. This is probably a reflection of the fact that the majority of the off-site parking occurs in the neighborhood to the west of Lincoln Park and this neighborhood has a very high proportion of rental units, who typically do not attend public meetings in high numbers.
- There is strong support for trails and pedestrian paths in and around the park and concerns about the narrowness of the sidewalks surrounding the park.

Summaries from the second open house will be included in the final report as will the golf course comments comparison.

**Attach W-4  
Cable TV Franchise**

**CITY OF GRAND JUNCTION**

| CITY COUNCIL AGENDA                   |                 |  |                      |                          |                          |                                 |
|---------------------------------------|-----------------|--|----------------------|--------------------------|--------------------------|---------------------------------|
| <b>Subject</b>                        |                 | Cable Television Franchise Agreement           |                      |                          |                          |                                 |
| <b>Meeting Date</b>                   |                 | 13 December 2004                               |                      |                          |                          |                                 |
| <b>Date Prepared</b>                  |                 | 08 December 2004                               | File #               |                          |                          |                                 |
| <b>Author</b>                         |                 | John Shaver, City Attorney & David Varley, ACM |                      |                          |                          |                                 |
| <b>Presenter Name</b>                 |                 | John Shaver, City Attorney & David Varley, ACM |                      |                          |                          |                                 |
| <b>Report results back to Council</b> |                 | <input type="checkbox"/>                       | No                   | <input type="checkbox"/> | Yes                      | When                            |
| <b>Citizen Presentation</b>           |                 | <input type="checkbox"/>                       | Yes                  | <input type="checkbox"/> | No                       | Name                            |
| <input checked="" type="checkbox"/>   | <b>Workshop</b> | <input type="checkbox"/>                       | <b>Formal Agenda</b> |                          | <input type="checkbox"/> | <b>Consent</b>                  |
|                                       |                 |  |                      |                          | <input type="checkbox"/> | <b>Individual Consideration</b> |

**Summary:** On several occasions City Council has discussed the idea of a formal franchise agreement with Bresnan Communications. If this item is to be placed on the ballot at the April 2005 City election then a decision must be made soon regarding the composition of such an agreement.

**Action Requested/Recommendation:** Request Council discussion and direction regarding this issue.

**Attachments:** Cable Television memo dated 22 November 2004 and a draft franchise agreement. (Many of the terms of the draft agreement were written before the currently proposed utilities in the right of way ordinance so the franchise could be amended if the right of way ordinance is adopted. Other revisions may need to be made to the agreement, in particular the franchise fee. As written the agreement contemplates a 5% fee; Staff acknowledges that Council has previously discussed imposing a 2.5% fee. Based on Council direction the draft agreement will be put in final form.)

**Background Information:** Over the last few years the City Council has discussed developing a franchise agreement with our local cable television provider, Bresnan Communications. Council has discussed the various elements that could be contained in a franchise agreement and has reviewed some of the provisions that are found in similar agreements in cities which are served by Bresnan Communications. Council has expressed a desire to proceed with developing a franchise agreement but there has not been a specific recommendation or direction to staff on the elements of such an agreement.

As part of the renewal discussion Staff has reviewed the information supplied by Bresnan. It is very technical; however it appears that the recent upgrades to the system were very positive. Since the upgrade Staff receives very few, if any complaints about cable services. Because it is not apparent that there are specific service needs that are not being met Staff recommends that

a franchise generally in the form attached be referred to the ballot. The draft agreement has been sent to the City's consulting attorney for his review and comment.

Any franchise agreement must be approved by the voters. In order for the franchise question to be on the April 2005 election the ballot title must be certified to the Secretary of State by 09 February 2005. The attached memo outlines two directions by which to schedule a franchise agreement for the next City election.



**TO: Kelly Arnold, City Manager**  
**FROM: John Shaver, City Attorney & David Varley Assistant City Manager**  
**DATE: 22 November 2004**  
**SUBJECT: Cable Television Franchise**

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During the past year the City Council has discussed the possibility of developing a formal franchise agreement with Bresnan Communications for the provision of cable television services in the City of Grand Junction. Council has considered services provided in other cities and has discussed a specific services proposal prepared by Bresnan.

Since the City Council's last meeting to discuss this issue a letter was sent to Bresnan Communications informing them that the City of Grand Junction would like to begin the process of renewing the cable television franchise. (Authorization for cable television was originally granted to Wentronics, a predecessor to Bresnan, in 1966.) We also asked Bresnan for certain information such as financial statements, corporate history, technical ability, etc. Bresnan has provided much of the requested information although some of it is quite technical in nature.

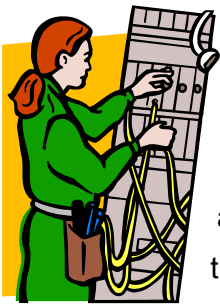
The City has a couple of options it can follow to prepare a franchise agreement, however, each option would have to be put on a ballot to receive voter approval. The April 2005 election could be used for this purpose.

In September 1997 the Mesa County Cable Television Advisory Board (CTAB) was commissioned. This board was authorized by the Mesa County Commissioners to provide recommendations concerning renewal of the County's cable television contract. Mesa County invited the local cities to participate in this process as it seemed likely that the cable television needs and concerns of our citizens would pretty much be similar and there was no need to duplicate this process. The City of Grand Junction was not a formal member of the CTAB but a City staff person worked with the County during this process.

The mission of the Cable Television Advisory Board was to ascertain community expectations and areas of concern related to the operation of the cable TV system in Mesa County and provide recommendations to the Commissioners prior to renegotiation of the cable TV agreement. The Advisory Board met on a regular basis over several months. During this time

they listened to outside experts, administered a public hearing to determine public interest and concern with cable television, conducted research and fact finding and discussed their main issues and findings.

After conducting its investigation this board determined that there were several issues which would be pertinent to the renegotiation and renewal of the County's cable TV contract. The Board's report contained issues and recommendations covering items such as Spanish language programming, a public, educational and governmental channel, the proper franchise fee, duration of the contract, minimum service and quality standards and technical upgrades and a multi-year upgrade plan. Mesa County's negotiations resulted in a cable television lease agreement that was approved by the County Commissioners in May 1999. Since the adoption of this agreement many of the recommendations made by the CTAB, such as Spanish language programming and a system upgrade, have been implemented.



Based on those findings and the fact that there are no apparent, significant concerns and the fact that most, if not all of the recommendations have been accomplished one option is to proceed to prepare a franchise agreement that would be placed on the ballot of the April 2005 election without reconvening the advisory board. This agreement could be patterned after franchise agreements that Bresnan has with other cities such as Billings, Montana, Leadville or Buena Vista, Colorado.

Another option is for the City to reconvene the Cable Television Advisory Board. This Board could review its report to update the progress that has been made regarding the status of the recommendations. A public hearing and/or survey could be conducted

to determine if there are additional community issues that have arisen since the research for the report was conducted. The ultimate goal under this option also includes voter approval of a franchise by placing an agreement on the ballot for the City's April 2005 election.



Either one of these options should result in the City acquiring a modern franchise agreement with Bresnan Communications for the provision of cable television services in the City of Grand Junction.

**BRESNAN COMMUNICATIONS  
AND  
THE CITY OF GRAND JUNCTION, COLORADO**

**CABLE FRANCHISE AGREEMENT**

**SECTION 1. DEFINITIONS AND EXHIBITS**

**(A) DEFINITIONS**

For the purposes of this Franchise, the following terms, phrases, words and their derivations shall have the meaning given herein. When not inconsistent with the context, words used in the present tense include the future, words in the plural include the singular, and words in the singular include the plural. Words not defined shall be given their common and ordinary meaning. The word "shall" is always mandatory and not merely directory.

1.1 "Activated" means the status of any capacity or part of the Cable System in which any Cable Service requiring the use of that capacity or part is available without further installation of system equipment, whether hardware or software.

1.2 "Affiliate," when used in connection with Grantee, means any Person who owns or controls, is owned or controlled by, or is under common ownership or control with, Grantee.

1.3 "Bad Debt" means amounts lawfully billed to a Subscriber and owed by the Subscriber for Cable Service and accrued as revenues on the books of Grantee, but not collected after reasonable efforts have been made by Grantee to collect the charges.

1.4 "Basic Service" means any Cable Service Tier which includes, at a minimum, the retransmission of local television Broadcast Signals and local Access programming.

1.5 "Broadcast Signal" means a television or radio signal transmitted over the air to a wide geographic audience, and received by a Cable System by antenna, microwave, satellite dishes or any other means.

1.6 "Cable Act" means the Title VI of the Communications Act of 1934, as amended and codified at 47 U.S.C. § 151, *et seq.*

1.7 "Cable Internet Service" means any Cable Service offered by Grantee whereby Persons receive access to the Internet through the Cable System.

1.8 "Cable Operator" means any Person or groups of Persons, including Grantee, who provide(s) Cable Service over a Cable System and directly or through one or more affiliates owns a significant interest in such Cable System or who otherwise control(s) or is (are) responsible for, through any arrangement, the management and operation of such a Cable System.

1.9 "Cable Service" means the one-way transmission to Subscribers of video programming or other programming service, and Subscriber interaction, if any, which is required for the selection or use of such video programming or other programming service.

1.10 "Cable System" means any facility including Grantee's, consisting of a set of closed transmissions paths and associated signal generation, reception, and control equipment that is designed to provide Cable Service which includes video programming and which is provided to multiple Subscribers within a community, but such term does

not include (A) a facility that serves only to retransmit the television signals of one or more television broadcast stations; (B) a facility that serves Subscribers without using any Right-of-Way; (C) a facility of a common carrier which is subject, in whole or in part, to the provisions of Title II of the Federal Communications Act (47 U.S.C. 201 et seq.), except that such facility shall be considered a Cable System (other than for purposes of Section 621(c) (47 U.S.C. 541(c)) to the extent such facility is used in the transmission of video programming directly to Subscribers, unless the extent of such use is solely to provide interactive on-demand services; (D) an open video system that complies with federal statutes; or (E) any facilities of any electric utility used solely for operating its electric utility systems.

1.11 "Channel" means a portion of the electromagnetic frequency spectrum which is used in the Cable System and which is capable of delivering a television channel (as television channel is defined by the FCC by regulation).

1.12 "City" is the City of Grand Junction, Colorado, a body politic and corporate under the laws of the State of Colorado, and all of the area within its boundaries, as such may change from time to time, and any of its legally established enterprises.

1.13 "City Council" means the Grand Junction City Council, or its successor, the governing body of the City of Grand Junction, Colorado.

1.14 "Commercial Subscribers" means any Subscribers other than Residential Subscribers.

1.15 "Demarcation Point" means the patch panel, termination block or other termination device provided by the Grantee, located within each I-Net site, which represents the interface between the I-Net and the Qualified I-Net User's local network or end user electronics. In all cases the Demarcation Point will be clearly marked as such by Grantee, and will provide an identifiable interface for the end user electronics.

1.16 "Designated Access Provider" means the entity or entities designated now or in the future by the City to manage or co-manage Access Channels and facilities. The City may be a Designated Access Provider.

1.17 "Director of Administrative Services" means the person designated by the City who is responsible for the City's administrative affairs.

1.18 "Downstream" means carrying a transmission from the Headend to remote points on the Cable System or to Interconnection points on the Cable System.

1.19 "Dwelling Unit" means any building, or portion thereof, that has independent living facilities, including provisions for cooking, sanitation and sleeping, and that is designed for residential occupancy. Buildings with more than one set of facilities for cooking shall be considered Multiple Dwelling Units unless the additional facilities are clearly accessory.

1.20 "Expanded Basic Service" means the Tier of optional video programming services, which is the level of Cable Service above Basic Service, and does not include Premium Services.

1.21 "FCC" means the Federal Communications Commission.

1.22 "Fiber Optic" means a transmission medium of optical fiber cable, along with all associated electronics and equipment, capable of carrying Cable Service or Institutional Network service by means of electric light wave impulses.

1.23 "Franchise" means the document in which this definition appears, *i.e.*, the contractual agreement, executed between the City and Grantee, containing the specific provisions of the authorization granted to use the streets,

alleys, public places, or other Rights of Way of the City, including references, specifications, requirements and other related matters.

1.24 "Franchise Area" means the area within the jurisdictional boundaries of the City, including any areas annexed by the City during the term of this Franchise.

1.25 "GAAP" means generally accepted accounting principles.

1.26 "Generally Applicable" means, when referenced to ordinances, laws, or regulations, legal obligations that are applied generally and not limited solely to Grantee.

1.27 "Grantee" means BRESNAN COMMUNICATIONS or its lawful successor, transferee or assignee.

1.28 "Gross Revenues" means any and all revenue received by the Grantee, or by any other entity that is a Cable Operator of the Grantee's Cable System, which may include Affiliates of Grantee from the operation of the Grantee's Cable System to provide Cable Services in the Franchise Area. Gross Revenues include, by way of illustration and not limitation, monthly fees charged Subscribers for Basic Service; any expanded Tiers of Cable Service; optional Premium Services; installation, disconnection, reconnection and change-in-service fees; Leased Access Channel fees; remote control rental fees; all Cable Service lease payments from the Cable System; late fees and administrative fees; fees, payments or other consideration received by the Grantee from programmers for carriage of programming on the Cable System and accounted for as revenue under GAAP; revenues from rentals or sales of converters or other Cable System equipment used to receive Cable Service; advertising revenues; the fair market value of consideration received by the Grantee for use of the Cable System to provide Cable Service and accounted for as revenue under GAAP; revenues from program guides; revenue from data transmissions to the extent these transmissions are considered Cable Services under federal law; additional outlet fees; revenue from Cable Internet Service to the extent this service is considered a Cable Service under federal law; Franchise fees; revenue from interactive services to the extent they are considered Cable Services under federal law; revenue from the sale or carriage of other Cable Services on the Cable System; and revenue from home shopping, bank-at-home Channels and other revenue-sharing arrangements. Gross Revenues shall include revenue received by any entity other than the Grantee where necessary to prevent evasion or avoidance of the obligation under this Franchise to pay the Franchise fees. Gross Revenues shall not include (i) to the extent consistent with GAAP, Bad Debt; provided, however, that all or part of any such Bad Debt that is written off but subsequently collected shall be included in Gross Revenues in the period collected; or (ii) any taxes on services furnished by the Grantee which are imposed directly on any Subscriber or user by the State, City or other governmental unit and which are collected by the Grantee on behalf of said governmental unit. The Franchise fee is not such a tax.

The parties intend for the definition of Gross Revenues to be as inclusive as possible consistent with existing applicable law. If there is a change in federal law subsequent to the Effective Date of this Franchise, such change shall not impact this Gross Revenues definition unless the change specifically preempts the affected portion of the definition above.

1.29 "Headend" means any facility for signal reception and dissemination on a Cable System, including cables, antennas, wires, satellite dishes, monitors, switchers, modulators, and processors for Broadcast Signals.

1.30 "Leased Access Channel" means any Channel or portion of a Channel of the Cable System available to the public in a manner consistent with 47 U.S.C. § 532 for commercial use by Persons other than Grantee, for a fee or charge.

1.31 "Node" means an exchange point in the signal distribution system portion of the Cable System, where optical signals are converted to RF signals.

1.32 "PEG Access Channel" means any Channel, or portion thereof, designated for PEG Access purposes or otherwise made available to facilitate or transmit PEG Access programming or services.

1.33 "Public, Educational, and Governmental Access" or "PEG Access" means the availability of Channel capacity on the Cable System for noncommercial use by various agencies, institutions, organizations, groups and individuals in the community, including the City and its designees, including, but not limited to:

a. "Public Access" means Access where community-based, noncommercial organizations, groups or individual members of the general public, on a nondiscriminatory basis, are the primary users.

b. "Educational Access" means Access where schools are the primary users having editorial control over programming and services. For purposes of this definition, "school" means any State-accredited educational institution, public or private, including, for example, primary and secondary schools, colleges and universities.

c. "Government Access" means Access where governmental institutions or their designees are the primary users having editorial control over programming and services.

1.34 "Person" means any individual, sole proprietorship, partnership, association, or corporation, or any other form of entity or organization.

1.35 "Premium Service" means programming choices (such as movie Channels, pay-per-view programs, or video on demand) offered to Subscribers on a per-Channel, per-program or per-event basis.

1.36 "Residential Subscriber" means any Person who receives Cable Service delivered to Dwelling Units or Multiple Dwelling Units, excluding such Multiple Dwelling Units billed on a bulk-billing basis.

1.37 "Right-of-Way" means each of the following which have been dedicated to the public or are hereafter dedicated to the public and maintained under public authority or by others and located within the Franchise Area: streets, roadways, highways, avenues, lanes, alleys, bridges, sidewalks, easements, rights-of-way and similar public property and areas.

1.38 "State" means the State of Colorado.

1.39 "Subscriber" means any Person who or which elects to subscribe to, for any purpose, Cable Service provided by Grantee by means of or in connection with the Cable System and whose premises are physically wired and lawfully Activated to receive Cable Service from Grantee's Cable System.

1.40 "Subscriber Network" means that portion of the Cable System used primarily by Grantee in the transmission of Cable Services to Residential Subscribers.

1.41 "Telecommunications" means the transmission, between or among points specified by the user, of information of the user's choosing, without change in the form or content of the information as sent and received (as provided in 47 U.S.C. Section 153(43)).

1.42 "Telecommunications Service" means the offering of Telecommunications for a fee directly to the public, or to such classes of users as to be effectively available directly to the public, regardless of the facilities used (as provided in 47 U.S.C. Section 153(46)).

1.43 "Tier" means a group of Channels for which a single periodic subscription fee is charged.

1.44 "Two-Way" means capable of providing both Upstream and Downstream transmissions.

1.45 "Upgrade" means improvements to the Cable System to increase the bandwidth of the System

1.46 "Upstream" means carrying a transmission to the Headend from remote points on the Cable System or from Interconnection points on the Cable System.

**(B) EXHIBITS**

The following documents, which are occasionally referred to in this Franchise, are formally incorporated and made a part of this Franchise by this reference:

*Exhibit A*, entitled Public Buildings

**SECTION 2. GRANT OF FRANCHISE**

**2.1 Grant**

(A) The Franchising Authority hereby grants to the Grantee a nonexclusive Franchise which authorizes the Grantee to construct, and operate, maintain, reconstruct, rebuild and Upgrade a Cable System in, along, among, upon, across, above, over, under, or in any manner connected with Public Ways within the Service Area, for the purpose of providing Cable Service subject to the terms and conditions set forth in this Franchise and in any prior utility use agreements entered into with regard to individual property. This Franchise shall constitute both a right and an obligation to provide the Cable Services required by, and to fulfill the obligations set forth in, the provisions of this Franchise.

(B) Nothing in this Franchise shall be deemed to waive the lawful requirements of any generally applicable City ordinance existing as of the Effective Date, as defined in subsection 2.3 (A).

(C) Each and every term, provision or condition herein is subject to applicable State, federal and City law, and the ordinances and regulations enacted pursuant thereto. Notwithstanding the foregoing, the City may not unilaterally alter the material rights and obligations of Grantee under this Franchise.

(D) This Franchise shall not be interpreted to prevent the City from imposing additional lawful conditions, including additional compensation conditions for use of the Rights-of-Way, should Grantee provide service other than Cable Service.

(E) Grantee promises and guarantees, as a condition of exercising the privileges granted by this Franchise, that any Person who is a Cable Operator of this Cable System in the Franchise Area, or directly involved in the management or operation of the Cable System in the Franchise Area, will also comply with the terms and conditions of this Franchise.

(F) No rights shall pass to Grantee by implication. Without limiting the foregoing, by way of example and not limitation, this Franchise shall not include or be a substitute for:

(1) Any other permit or authorization required for the privilege of transacting and carrying on a business within the City that may be required by the ordinances and laws of the City;

(2) Any permit, agreement, or authorization required by the City for Right-of-Way users in connection with operations on or in Rights-of-Way or public property including, by way of example and not limitation, street cut permits; or

(3) Any permits or agreements for occupying any other property of the City or private entities to which access is not specifically granted by this Franchise including, without limitation, permits and agreements for placing devices on poles, in conduits or in or on other structures.

(G) This Franchise is intended to convey limited rights and interests only as to those Rights-of-Way in which the City has an actual interest. It is not a warranty of title or interest in any Right-of-Way; it does not provide the Grantee with any interest in any particular location within the Right-of-Way; and it does not confer rights other than as expressly provided in the grant hereof.

(H) This Franchise does not authorize or prohibit Grantee to provide Telecommunications Service, or to construct, operate or maintain Telecommunications facilities. This Franchise is not a bar to imposition of any lawful conditions on Grantee with respect to Telecommunications, whether similar, different or the same as the conditions specified herein. This Franchise does not relieve Grantee of any obligation it may have to obtain from the City an authorization to provide Telecommunications Services, or to construct, operate or maintain Telecommunications facilities, or relieve Grantee of its obligation to comply with any such authorizations that may be lawfully required.

## **2.2 Use of Rights-of-Way**

(A) Subject to the City's supervision and control, Grantee may erect, install, construct, repair, replace, reconstruct, and retain in, on, over, under, upon, across, and along the Rights-of-Way within the City such wires, cables, conductors, ducts, conduits, vaults, manholes, amplifiers, pedestals, attachments and other property and equipment as are necessary and appurtenant to the operation of a Cable System within the City.

(B) Grantee must follow City-established requirements for placement of Cable System facilities in Rights-of-Way, including the specific location of facilities in the Rights-of-Way, and must in any event install Cable System facilities in a manner that minimizes interference with the use of the Rights-of-Way by others, including others that may be installing communications facilities. Within limits reasonably related to the City's role in protecting public health, safety and welfare, the City may require that Cable System facilities be installed at a particular time, at a specific place or in a particular manner as a condition of access to a particular Right-of-Way; may deny access if Grantee is not willing to comply with City's lawful requirements; and may require Grantee at its cost to remove any facility that is not installed in compliance with the requirements lawfully established by the City, and may require Grantee to cooperate with others to minimize adverse impacts on the Rights-of-Way through joint trenching and other arrangements.

## **2.3 Effective Date and Term of Franchise**

(A) This Franchise and the rights, privileges and authority granted hereunder shall take effect on May \_\_, 2005 (the "Effective Date"), and shall terminate on May \_\_, 2010 unless terminated sooner as hereinafter provided. The term shall be automatically extended for an additional five years for a total of 10 years upon the Grantee's successful completion of the initial five-year term of the Franchise.

(B) The grant of this Franchise shall have no effect on the Grantee's duty under any prior ordinance(s) and all amendments thereto or any ordinance in effect prior to the Effective Date of this Franchise.

## **2.4 Franchise Nonexclusive**

This Franchise shall be nonexclusive and subject to all prior rights, interests, easements or licenses granted by the City to any Person to use any property, Right-of-Way, right, interest or license for any purpose whatsoever, including the right of the City to use same for any purpose it deems fit, including the same or similar purposes allowed Grantee hereunder. The City may at any time grant authorization to use the Rights-of-Way for any purpose



not incompatible with Grantee's authority under this Franchise and for such additional franchises for Cable Systems as the City deems appropriate.

## **2.5 Police Powers**

(A) Grantee's rights hereunder are subject to the police powers of the City to adopt and enforce ordinances necessary to the safety, health, and welfare of the public, and Grantee agrees to comply with all laws and ordinances of general applicability enacted, or hereafter enacted, by the City or any other legally constituted governmental unit having lawful jurisdiction over the subject matter hereof. The City shall have the right to adopt, from time to time, such Generally Applicable ordinances as may be deemed necessary in the exercise of its police power; provided that such ordinances shall be reasonable and not destructive of the rights granted in this Franchise.

(B) The City reserves the right to exercise its police powers, notwithstanding anything in this Franchise to the contrary, and any conflict between the provisions of this Franchise and any other present or future lawful exercise of the City's police powers shall be resolved in favor of the latter.

## **2.6 Grant of Other Franchises**

In the event the City enters into a franchise, permit, license, authorization or other agreement of any kind with any other Person or entity other than the Grantee to enter into the City's Rights-of-Way for the purpose of constructing or operating a Cable System or providing Cable Service to any part of the Franchise Area, in which the Grantee is actually providing Cable Service under the terms and conditions of this Franchise or is required to extend Cable Service to under the provisions of this Franchise, the material provisions thereof, in the reasonable discretion of the City, shall be reasonably comparable to those contained herein, in order that one operator not be granted an unfair competitive advantage over another.

## **2.7 Familiarity with Franchise**

The Grantee and the City each acknowledges and warrants by acceptance of the rights, privileges and agreements granted herein, that it has carefully read and fully comprehends the terms and conditions of this Franchise and is willing to and does accept all lawful and reasonable risks of the meaning of the provisions, terms and conditions herein. The Grantee further acknowledges and states that it has fully studied and considered the requirements relating to the Upgrade of the Cable System, and all other requirements and provisions of this Franchise, and finds that the same are commercially practicable as of the effective date of this Agreement.

## **2.8 Effect of Acceptance**

By accepting the Franchise, the Grantee: (1) acknowledges and accepts the City's legal right to issue and enforce the Franchise; (2) accepts and agrees to comply with each and every provision of this Franchise subject to applicable law; and (3) agrees that the Franchise was granted pursuant to processes and procedures consistent with applicable law, as existed on the effective date of this Franchise, and that it will not raise any claim to the contrary.

## **SECTION 3. FRANCHISE FEE PAYMENT AND FINANCIAL CONTROLS**

### **3.1 Franchise Fee**

(A) As compensation for the benefits and privileges granted under this Franchise and in consideration of permission to use the City's Rights-of-Way, Grantee shall pay as a Franchise fee to the City, throughout the duration of this Franchise, an amount equal to five percent (5%) of Grantee's annual Gross Revenues. Accrual of such Franchise fee shall commence as of the Effective Date of this Franchise.

(B) The City recognizes that, in the future, Grantee may allocate revenue between Cable Services (which are subject to the Franchise fee) and non-Cable Services (which are not subject to the Franchise fee but may be subject to other fees and/or taxes), when these two types of service are bundled together in a discounted package offered to Subscribers. Due to the ambiguities that currently exist both in the business and regulatory environment on this issue, the City and the Grantee hereby reserve all rights, claims, defenses and remedies regarding the City's authority to impose and/or enforce requirements related to the revenue allocation methodology to be used when Cable Services and non-Cable Services are offered to Subscribers in a discounted package, for the purpose of calculating Franchise fee payments.

Further, in the event that the City believes that Grantee has unlawfully, unfairly, or in violation of this Franchise allocated revenue between Cable Services and non-Cable Services for the purpose of calculating Franchise fee payments, the City and the Grantee shall meet upon advance notice from the City to discuss the allocation methodology. If the City and the Grantee cannot agree on the matter within a reasonable period of time, the City and Grantee shall submit the matter to a mutually agreeable third party for mediation. The cost of the mediation shall be shared equally between the City and the Grantee. If the mediation is unsuccessful or if the City and the Grantee are unable to mutually agree on a mediator, then either the City or the Grantee can bring the matter to a court of competent jurisdiction, or pursue any other remedies available to them in this Franchise or by law.

### **3.2 Payments**

In accordance with the Cable Act, the 12-month period applicable under the Franchise for the computation of the Franchise fee shall be a calendar year. The Franchise fee payment shall be payable quarterly. Each payment shall be due and payable no later than sixty (60) days after the end of the preceding calendar quarter.

### **3.3 Acceptance of Payment and Recomputation**

No acceptance of any payment shall be construed as an accord by the City that the amount paid is, in fact, the correct amount, nor shall any acceptance of payments be construed as a release of any claim the City may have for further or additional sums payable or for the performance of any other obligation of Grantee.

### **3.4 Annual Franchise Fee Reports**

Grantee shall, with each Franchise fee payment, furnish to the City a statement stating the total amount of Gross Revenues for the year and all payments, deductions and computations for the period. Such statement shall be signed by the General Manager or a financial officer or controller of Grantee, stating that it accurately reflects the Gross Revenues of the Grantee prior to submission to the City.

### **3.5 Audits**

On an annual basis, upon thirty (30) days prior written notice, the City, including the City's Auditor or his/her authorized representative, shall have the right to conduct an independent audit of Grantee's records reasonably related to the administration or enforcement of this Franchise, in accordance with GAAP. If the audit shows that Franchise fee payments have been underpaid by five percent (5%) or more, Grantee shall pay the total cost of the audit, such cost not to exceed two thousand dollars (\$2,000). The City's right to audit and the Grantee's obligation to retain records related to a Franchise fee audit shall expire three (3) years after each Franchise fee payment has been made to the City.

### **3.6 Late Payments**

In the event any payment due annually is not received within sixty (60) days from the end of the calendar year, Grantee shall pay interest on the amount due (at the prime rate as listed in the Wall Street Journal on the date

the payment was due compounded annually), calculated from the date the payment was originally due until the date the City receives the payment.

### **3.7 Underpayments**

If a net Franchise fee underpayment is discovered as the result of an audit, Grantee shall pay interest at the rate of eight percent (8%) per annum, compounded annually, calculated from the date each portion of the underpayment was originally due until the date Grantee remits the underpayment to the City.

### **3.8 Alternative Compensation**

In the event the obligation of Grantee to compensate the City through Franchise fee payments is lawfully suspended or eliminated, in whole or part, then Grantee shall pay to the City compensation equivalent to the compensation paid to the City by other similarly situated users of the City's Rights-of-Way for Grantee's use of the City's Rights-of-Way, provided that in no event shall such payments exceed the equivalent of five percent (5%) of Grantee's Gross Revenues (subject to the other provisions contained in this Franchise).

### **3.9 Maximum Legal Compensation**

The parties acknowledge that, at present, applicable Federal law limits the City to collecting a maximum permissible franchise fee of five percent (5%) of annual Gross Revenues. In the event that at any time during the duration of this Franchise Agreement, this maximum permissible franchise fee is increased, the City may by ordinance, upon giving the public the opportunity to comment, increase the franchise fee, provided that the maximum permissible franchise fee does not exceed seven percent (7%), and provided that the City shall not increase the franchise fee percentage more than one-half of one percent in any one 12-month period, and further provided that the increase in the franchise fee percentage shall not go into effect until one hundred twenty (120) days after written notice is given to Grantee by the City of such amendment.

### **3.10 Additional Commitments Not Franchise Fee Payments**

No term or condition in this Franchise shall in any way modify or affect Grantee's obligation to pay Franchise fees. Although the total sum of Franchise fee payments and additional commitments set forth elsewhere in this Franchise may total more than five percent (5%) of Grantee's Gross Revenues in any twelve (12) month period, Grantee agrees that the additional commitments herein are not Franchise fees as defined under any federal law in effect, as of the Effective Date of this Franchise, nor are they to be offset or credited against any Franchise fee payments due to the City, nor do they represent an increase in Franchise fees to be passed through to Subscribers pursuant to any federal law.

### **3.11 Tax Liability**

Subject to applicable law, the Franchise fees shall be in addition to any and all taxes or other levies or assessments which are now or hereafter required to be paid by businesses in general by any law of the City, the State or the United States including, without limitation, sales, use and other taxes, business license fees or other payments.

Payment of the Franchise fees under this Franchise shall not exempt Grantee from the payment of any other license fee, permit fee, tax or charge on the business, occupation, property or income of Grantee that may be lawfully imposed by the City. Any other license fees, taxes or charges shall be of general applicability in nature and shall not be levied against Grantee solely because of its status as a Cable Operator, or against Subscribers, solely because of their status as such.

### **3.12 Financial Records**

Grantee agrees to meet with a representative of the City upon request to review Grantee's methodology of record-keeping, the computing of Franchise fee obligations and other procedures, the understanding of which the City deems necessary for reviewing reports and records.

### **3.13 Payment on Termination**

If this Franchise terminates for any reason, the Grantee shall file with the City within ninety (90) calendar days of the date of the termination, a revenue statement in accordance with Section 3.4, showing the Gross Revenues received by the Grantee since the end of the previous fiscal year. At the time Grantee submits its revenue statement to the City, Grantee shall also submit a statement of the amounts owed and payment therefore. Acceptance of payment by City shall not operate as a waiver of any disputed amounts claimed owed. .

## **SECTION 4. ADMINISTRATION AND REGULATION**

### **4.1 Authority**

(A) The City shall reasonably regulate the exercise of the privileges permitted by this Franchise in the public interest. The City may delegate that power and right, or any part thereof, in its sole discretion, to the extent permitted under State and local law, provided, however, Grantee shall have the right of appeal to the legislative body of the City any adverse determination made by a delegate of the City.

(B) Nothing in this Franchise shall limit nor expand the City's right of eminent domain under State law.

### **4.2 Rates and Charges**

All of Grantee's rates and charges related to or regarding Cable Services shall be subject to regulation by the City to the full extent authorized by applicable federal, State and local laws.

### **4.3 Rate Discrimination**

All of Grantee's rates and charges shall be published (in the form of a publicly-available rate card) and be non-discriminatory as to all Persons and organizations of similar classes, under similar circumstances and conditions. Grantee shall apply its rates in accordance with governing law, with identical rates and charges for all Subscribers receiving identical Cable Services, without regard to race, color, ethnic or national origin, religion, age, sex, sexual orientation, marital, military or economic status, or physical or mental disability or geographic location within the City. Grantee shall offer the same Cable Services to all Residential Subscribers at identical rates and to Multiple Dwelling Unit Subscribers as authorized by FCC rules. Grantee shall permit Subscribers to make any lawful in-residence connections the Subscriber chooses without additional charge nor penalty to the Subscriber therefor. However, if any in-home connection requires service from Grantee due to signal quality, signal leakage or other factors, caused by improper installation of such in-home wiring or faulty materials of such in-home wiring, the Subscriber may be charged reasonable service charges by Grantee. Nothing herein shall be construed to prohibit:

(A) The temporary reduction or waiving of rates or charges in conjunction with valid promotional campaigns; or

(B) The offering of reasonable discounts to senior citizens or economically disadvantaged citizens; or

(C) The offering of rate discounts for Cable Service; or

(D) The Grantee from establishing different and nondiscriminatory rates and charges and classes of service for Commercial Subscribers, as allowable by federal law and regulations.

#### **4.4 Filing of Rates and Charges**

(A) Throughout the term of this Franchise, Grantee shall maintain on file with the City a complete schedule of applicable rates and charges for Cable Services provided under this Franchise. Nothing in this subsection shall be construed to require Grantee to file rates and charges under temporary reductions or waivers of rates and charges in conjunction with promotional campaigns. As used in this subsection, no rate or charge shall be considered temporary if Subscribers have the ability over a period greater than six (6) consecutive months (or such other period as may be approved by the City) to purchase Cable Services at such rate or charge.

(B) Upon written request of the City, Grantee shall provide a complete schedule of current rates and charges for Leased Access Channels, or portions of such Channels, provided by Grantee. The schedule shall include a description of the price, terms, and conditions established by Grantee for Leased Access Channels.

#### **4.5 Cross Subsidization**

Grantee shall comply with all applicable laws regarding rates for Cable Services and all applicable laws covering issues of cross subsidization.

#### **4.6 Reserved Authority**

The Grantor and the City each reserves all rights and authority arising from the Cable Act and any other relevant provisions of federal, State, or local law.

#### **4.7 Time Limits Strictly Construed**

Whenever this Franchise sets forth a time for any act to be performed by Grantee, such time shall be deemed to be of the essence, and any failure of Grantee to perform within the allotted time may be considered a material breach of this Franchise, and sufficient grounds for the City to invoke any relevant remedy.

#### **4.8 Franchise Amendment Procedure**

Either party may at any time seek an amendment of this Franchise by so notifying the other party in writing. Within thirty (30) days of receipt of notice, the City and Grantee shall meet to discuss the proposed amendment(s). If the parties reach a mutual agreement upon the suggested amendment(s), such amendment(s) shall be submitted to the City Council for its approval. If so approved by the City Council, and the Grantee, then the amendment(s) shall, be deemed part of this Franchise. If mutual agreement is not reached, there shall be no amendment.

#### **4.9 Performance Evaluations**

(A) The City may hold performance evaluation sessions within thirty (30) days of the triennial anniversary dates of the Effective Date of this Franchise. All such evaluation sessions shall be conducted by the City.

(B) Special evaluation sessions may be held at any time by the City during the term of this Franchise upon reasonable prior written notice to Grantee.

(C) All evaluation sessions shall be open to the public and announced at least two (2) weeks in advance in a newspaper of general circulation in the City.

(D) Topics which may be discussed at any evaluation session may include, but are not limited to, Cable Service rate structures; Franchise fee payments; liquidated damages; free or discounted Cable Services; application

of new technologies; Cable System performance; Cable Services provided; programming offered; Subscriber complaints; privacy; amendments to this Franchise; judicial and FCC rulings; line extension policies; and the City or Grantee's rules; provided that nothing in this subsection shall be construed as requiring the renegotiation of this Franchise.

(E) During evaluations under this subsection, Grantee shall fully cooperate with the City and shall provide such information and documents as the City may reasonably require to perform the evaluation.

#### **4.10 Late Fees**

(A) For purposes of this subsection, any assessment, charge, cost, fee or sum, however characterized, that the Grantee imposes upon a Subscriber solely for late payment of a bill is a late fee and shall be applied in accordance with applicable law.

(B) Nothing in this subsection shall be deemed to create, limit or otherwise affect the ability of the Grantee, if any, to impose other assessments, charges, fees or sums other than those permitted by this subsection, for the Grantee's other services or activities it performs in compliance with applicable law, including FCC law, rule or regulation.

(C) The Grantee's late fee and disconnection policies and practices shall be nondiscriminatory and such policies and practices, and any fees imposed pursuant to this subsection, shall apply equally in all parts of the City without regard to the neighborhood or income level of the Subscriber.

#### **4.11 Force Majeure**

In the event Grantee is prevented or delayed in the performance of any of its obligations under this Franchise by reason beyond the control of Grantee, Grantee shall have a reasonable time, under the circumstances, to perform the affected obligation under this Franchise or to procure a substitute for such obligation which is reasonably satisfactory to the City. Those conditions which are not within the control of Grantee include, but are not limited to, natural disasters, civil disturbances, power outages, telephone network outages, and severe or unusual weather conditions which have a direct and substantial impact on the Grantee's ability to provide Cable Services in the City and which was not caused and could not have been avoided by the Grantee using its reasonable best efforts in its operations to avoid such results.

If Grantee believes that a reason beyond its control has prevented or delayed its compliance with the terms of this Franchise, Grantee shall provide documentation as reasonably required by the City to substantiate the Grantee's claim. If Grantee has not yet cured the deficiency, Grantee shall also provide the City with its proposed plan for remediation, including the timing for such cure. To the extent any non-performance is the result of any *force majeure* condition, Grantee shall not be held in default nor suffer any penalty as a result.

### **SECTION 5. FINANCIAL AND INSURANCE REQUIREMENTS**

#### **5.1 Indemnification**

(A) General Indemnification. Grantee shall indemnify, defend and hold the City, its officers, officials, boards, commissions, and employees, harmless from any action or claim for injury, damage, loss, liability, cost or expense, including court and appeal costs and attorneys' fees or expenses, arising from any casualty or accident to Person or property, including, without limitation, copyright infringement, defamation, and all other damages in any

way arising out of, or by reason of, any construction, excavation, operation, maintenance, reconstruction, or any other act done under this Franchise, by or for Grantee, or by its agents, or its employees, or by reason of any neglect or omission of Grantee. Grantee shall reasonably consult and cooperate with the City while conducting its defense of the City.

(B) Indemnification for Relocation. Grantee shall indemnify the City for any damages, claims, additional costs or expenses assessed against, or payable by, the City arising out of, or resulting from Grantee's failure to remove, adjust or relocate any of its facilities in the Rights-of-Way in a timely manner in accordance with any relocation required by the City.

(C) Additional Circumstances. Grantee shall also indemnify, defend and hold the City harmless for any claim for injury, damage, loss, liability, cost or expense, including court and appeal costs and attorneys' fees or expenses in any way arising out of:

(1) The lawful actions of the City in granting this Franchise to the extent such actions are consistent with this Franchise and applicable law;

(2) Damages arising out of any failure by Grantee to secure consents from the owners, authorized distributors, or licensees/licensors of programs to be delivered by the Cable System, whether or not any act or omission complained of is authorized, allowed or prohibited by this Franchise.

(D) Procedures and Defense. If a claim or action arises, the City or any other indemnified party shall promptly tender the defense of the claim to Grantee, which defense shall be at Grantee's expense. The City may participate in the defense of a claim in which it is named, at its own cost. Grantee may not agree to any settlement of claims affecting the City without the City's approval.

(E) Non-waiver. The fact that Grantee carries out any activities under this Franchise through independent contractors shall not constitute an avoidance of or defense to Grantee's duty of defense and indemnification under this subsection.

(F) Expenses. If separate representation to fully protect the interests of both parties is necessary, such as arising from a conflict of interest between the City and the counsel selected by Grantee to represent the City, after all reasonable measures have been taken to prevent the necessity of hiring separate counsel for the City, then the Grantee shall pay all reasonable expenses incurred by the City in defending itself with regard to any action, suit or proceeding indemnified by Grantee. The City's expenses shall include all reasonable out-of-pocket expenses, such as consultants' fees, and shall also include the reasonable value of any services rendered by the City Attorney or his/her assistants or any employees of the City but shall not include outside attorneys' fees for services that are unnecessarily duplicative of services provided the City by Grantee.

## **5.2 Insurance**

(A) Grantee shall maintain in full force and effect at its own cost and expense each of the following policies of insurance coverage:

(1) Commercial General Liability insurance with limits of no less than one million dollars (\$1,000,000.00) per occurrence and one million dollars (\$1,000,000.00) general aggregate. Coverage shall be at least as broad as that provided by ISO CG 00 01 1/96 or its equivalent and include severability of interests. Such insurance shall name the City, its officers, officials and employees as additional insureds per ISO CG 2026 or its equivalent. There shall be a waiver of subrogation and rights of recovery against the City, its officers, officials and employees. Coverage shall apply as to claims between insureds on the policy, if applicable.

(2) Commercial Automobile Liability insurance with minimum combined single limits of one million dollars (\$1,000,000.00) each occurrence and one million dollars (\$1,000,000.00) aggregate with respect to each of Grantee's owned, hired and non-owned vehicles assigned to or used in the operation of the Cable System in the City. The policy shall contain a severability of interests' provision.

(B) A certificate of insurance shall be provided to the City stating that the policy or policies shall not be canceled or materially changed so as to be out of compliance with these requirements without thirty (30) days written notice first provided to the City, via certified mail, and ten (10) days notice for nonpayment of premium. If the insurance is canceled or materially altered so as to be out of compliance with the requirements of this subsection within the term of this Franchise, Grantee shall provide replacement coverage. Grantee agrees to maintain continuous uninterrupted insurance coverage, in at least the amounts required, for the duration of this Franchise.

### **5.3 Deductibles / Certificate of Insurance**

Any deductible of the policies shall not in any way limit Grantee's liability to the City.

(A) Deductibles.

(1) The City, its officers, officials, boards, commissions, and employees shall be covered as, and have the rights of, additional insureds with respect to liability arising out of activities performed by or for which Grantee has assumed responsibility herein.;

(2) Grantee's insurance coverage shall be primary insurance with respect to the City, its officers, officials, boards, commissions, and employees. Any insurance or self-insurance maintained by the City, its officers, officials, boards, commissions, and employees shall be in excess of the Grantee's insurance and shall not contribute to it; and

(3) Grantee's insurance shall apply separately to each insured against whom a claim is made or lawsuit is brought, except with respect to the limits of the insurer's liability.

(B) Acceptability of Insurers. The insurance obtained by Grantee shall be placed with insurers with a Best's rating of no less than "A-."

(C) Verification of Coverage. The Grantee shall furnish the City with certificate of insurance reflecting blanket additional insured status. The certificate is to be signed by a Person authorized by that insurer to bind coverage on its behalf. The certificate is to be on standard forms or such forms as are consistent with standard industry practices.

(D) Self-Insurance. In the alternative to providing a certificate of insurance to the City certifying insurance coverage as required above, Grantee may provide self-insurance in the same amount and level of protection for Grantee and City, its officers, and employees as otherwise required under this Section. The adequacy of self-insurance shall be subject to the periodic review and approval of the City.

### **5.4 CONSTRUCTION BOND**

(A) Within 30 days of commencement of an Upgrade of the Cable System, Grantee shall provide and maintain in effect a construction bond in an amount no less than twenty thousand dollars (\$20,000) to secure completion of the Upgrade. Upon the successful completion of the Upgrade, the City shall release or return the bond within ten (10) business days of receipt of written request, either by signing a release form or returning the bond itself.



(B) The Construction Bond may be drawn on by City for damages relating to the System Upgrade construction. Any such draw shall be conducted according to the procedures of Section 14, including that Grantee has received written notice and thirty (30) days after receipt of notice to cure any material violations before any payment.

(C) Within thirty (30) days after notice to Grantee that any amount has been withdrawn by the Grantee from the bond pursuant to Section 14, Grantee shall restore the bond to its original amount.

(D) Grantee shall have the right to appeal to the City Council for reimbursement in the event Grantee believes that the bond was drawn upon improperly. Grantee shall also have the right of judicial appeal if Grantee believes the bond has not been properly drawn upon in accordance with this Franchise. Any amounts the City erroneously or wrongfully withdraws from the bond shall be returned to Grantee with interest, from the date of withdrawal at a rate equal to the prime rate of interest as quoted in the Wall Street Journal on the date the funds were withdrawn.

(E) Maintenance of the requisite construction bond shall not in any way limit the liability of the Grantee for any failure to fully perform its obligations under this Franchise Agreement.

## **SECTION 6. CUSTOMER SERVICE**

### **6.1 Customer Service Standards**

Grantee shall comply with Customer Service Standards promulgated by the FCC as well as any applicable customer service standards lawfully adopted of the City, as the same may be amended from time to time by the City Council acting by ordinance. Grantee reserves the right to challenge any customer service ordinance that it believes is inconsistent with its contractual rights under this Franchise.

### **6.2 Subscriber Privacy**

Grantee shall fully comply with any provisions regarding the privacy rights of Subscribers contained in federal, State, or local law.

### **6.3 Subscriber Contracts**

Grantee shall not enter into a contract with any Subscriber that is in conflict with the terms of this Franchise, or any Exhibit hereto, or the requirements of any applicable Customer Service Standard. Upon request, Grantee will provide to the City a sample of the Subscriber contract or service agreement then in use.

### **6.4 Advance Notice to City**

The Grantee shall use reasonable efforts to furnish any notices provided to Subscribers or the media in the normal course of business to the City in advance.

## **SECTION 7. REPORTS AND RECORDS**

### **7.1 Open Records**

The City, including the City's Auditor or his/her authorized representative, shall have access to, and the right to inspect, any books and records of Grantee, and its parent corporations and Affiliates which are reasonably related to the administration or enforcement of the terms of this Franchise. Grantee shall not deny the City access to

any such records on the basis that Grantee's records are under the control of any Affiliate or a third party. The City may, in writing, request copies of any such records required under this Section 7 and Grantee shall provide such copies within forty-five (45) days of the receipt of such request. One (1) copy of all reports and records required under this or any other subsection shall be furnished to the City, at the sole expense of Grantee. If the requested books and records are too voluminous, or for security reasons cannot be copied or removed, then Grantee may request, in writing within 30 (30) days of receipt of City's written request, that the City inspect them at Grantee's local offices. If any books or records of Grantee are not kept in a local office and not made available in copies to the City upon written request as set forth above, and if the City reasonably determines that an examination of such records is necessary or appropriate for the performance of any of the City's administration or enforcement of this Franchise, then all reasonable travel and related expenses incurred in making such examination shall be paid by Grantee.

## **7.2 Confidentiality**

The City agrees to treat as confidential any books or records that constitute proprietary or confidential information under federal or State law, to the extent Grantee makes the City aware of such confidentiality. Grantee shall be responsible for clearly and conspicuously stamping the word "Confidential" on each page that contains confidential or proprietary information, and shall provide a brief written explanation as to why such information is confidential under State or federal law. If the City believes it must release any such confidential books and records in the course of enforcing this Franchise, or for any other reason, it shall advise Grantee in advance so that Grantee may take appropriate steps to protect its interests. If the City receives a demand from any Person for disclosure of any information designated by Grantee as confidential, the City shall, so far as consistent with applicable law, advise Grantee and provide Grantee with a copy of any written request by the party demanding access to such information within a reasonable time. Until otherwise ordered by a court or agency of competent jurisdiction, the City agrees that, to the extent permitted by State and federal law, it shall deny access to any of Grantee's books and records marked confidential as set forth above to any Person. Grantee shall reimburse the City for all reasonable costs and attorneys fees incurred in any legal proceedings pursued under this Section to protect the confidentiality of Grantee's records.

## **7.3 Records Required**

(A) Except as otherwise indicated herein, Grantee shall maintain for the period of time required by FCC or other applicable governmental regulatory agency, or when there is no applicable governmental agency requirement, for five years, and shall furnish to the City upon written request:

(1) At the completion of the Upgrade of the Cable System described in Section 2.3 herein: (a), a complete set of maps showing the location of all Cable System equipment and facilities in the Right-of-Way, but excluding detail on proprietary electronics contained therein and Subscriber drops;(b) as-built maps including proprietary electronics shall be available at Grantee's offices for inspection by the City's authorized representative(s) or agent(s) and made available upon reasonable notice during regular business hours, during the course of technical inspections as reasonably conducted by the City. These maps shall be certified as accurate at the time they are prepared by an appropriate representative of the Grantee;

(2) A copy of all FCC filings on behalf of Grantee and its Affiliates which relate to the operation of the Cable System in the City and;

(3) A current list of Cable Services, rates and Channel line-ups.

(B) Subject to subsection 7.2, all information furnished to the City is public information, and shall be treated as such, except for information involving the privacy rights of individual Subscribers.

#### **7.4 Annual Reports**

Upon written request, but no more often than annually, Grantee shall submit to the City a written report, in a form reasonably acceptable to the City, which shall include, but not necessarily be limited to, a summary of the previous year's activities in the development of the Cable System, including, but not limited to, Cable Services begun or discontinued during the reporting year.

#### **7.5 Copies of Federal and State Reports**

Upon reasonable written request, Grantee shall submit to the City copies of all pleadings, applications, notifications, communications and documents of any kind, submitted by Grantee or its parent corporation(s), to any federal, State or local courts, regulatory agencies and other government bodies if such documents directly relate to the operations of Grantee's Cable System within the City. Grantee shall submit such documents to the City no later than thirty (30) days after receipt of written request. Grantee shall not claim confidential, privileged or proprietary rights to such documents unless under federal, State, or local law such documents have been determined to be confidential by a court of competent jurisdiction, or a federal or State agency. With respect to all documents provided to any federal, State, or local regulatory agency as a routine matter in the due course of operating Grantee's Cable System within the City, Grantee shall make such documents available to the City upon reasonable written request.

#### **7.6 Complaint File and Reports**

(A) Grantee shall keep an accurate and comprehensive file of any and all complaints it receives regarding the Cable System in the Service Area and Grantee's actions in response to those complaints. Such files shall be kept in a manner consistent with the privacy rights of Subscribers. These files shall remain open to Grantor and the public during normal business hours. Upon written request, no more often than annually, Grantee shall provide the City a summary which shall include information concerning customer complaints received by Grantee during the time period specified in Grantor's request, but no greater than a one-year period, including a summary of customer complaints referred by the City in writing to Grantee.

(B) A log of all service interruptions shall be maintained and provided to City upon written request;

(C) Grantee shall provide the City such other information as reasonably requested by the City, provided that Grantee is given thirty (30) days prior written notice. .

#### **7.7 Failure to Report**

The failure or neglect of Grantee to file any of the reports or filings required under this Franchise (not including clerical errors or errors made in good faith), may, at the City's option, be deemed a material breach of this Franchise.

#### **7.8 False Statements**

Any false or misleading statement or representation in any report required by this Franchise (not including clerical errors or errors made in good faith) may be deemed a material breach of this Franchise and may subject Grantee to all remedies, legal or equitable, which are available to the City under this Franchise or otherwise.

## **SECTION 8. PROGRAMMING**

### **8.1 Broad Programming Categories**

Grantee shall provide or enable the provision of at least the following initial broad categories of programming to the extent such categories are reasonably available:

- (A) Educational programming;
- (B) Colorado news, weather & information;
- (C) Sports;
- (D) General entertainment (including movies);
- (E) Children/family-oriented;
- (F) Arts, culture and performing arts;
- (G) Science/documentary; and
- (H) National news, weather and information.

### **8.2 Deletion or Reduction of Broad Programming Categories**

Grantee shall not delete or so limit as to effectively delete any broad category of programming within its control without the prior written consent of the City.

### **8.3 Parental Control Device**

Upon request by any Subscriber, Grantee shall provide by sale or lease a parental control or lockout device, traps or filters to enable a Subscriber to prohibit viewing of a particular cable service during periods selected by the Subscriber. Grantee shall inform its Subscribers of the availability of the lockout device at the time of their initial subscription and periodically thereafter. Any device offered shall be at a rate, if any, in compliance with applicable law.

### **8.4 Continuity of Service Mandatory**

(A) The Grantee shall use reasonable efforts so as to ensure that all Subscribers receive continuous, uninterrupted Cable Service insofar as their financial and other obligations to Grantee are honored. For the purposes of this subsection, "uninterrupted" does not include short-term outages of the Cable System for maintenance or testing.

(B) In the event of a change of Grantee, or in the event another Cable Operator acquires the Cable System in accordance with this Franchise and applicable law, Grantee shall reasonably cooperate with the City, new franchisee or Cable Operator in maintaining continuity of Cable Service to all Subscribers. During any transition period, Grantee shall be entitled to the revenues for any period during which it operates the Cable System, and shall be entitled to reasonable costs for its services when it no longer operates the Cable System.

(C) Subject to the *force majeure* provision of this Agreement, failure of Grantee to operate the Cable System for four (4) consecutive days without prior approval of the City or its designee, or without just cause may, be considered a material violation of this Agreement.

## **8.5 Services for the Disabled**

Grantee shall comply with the Americans with Disabilities Act and any amendments thereto.

## **SECTION 9. ACCESS**

### **9.1 Management and Control of Access Channels**

The City shall have sole and exclusive responsibility for identifying the Designated Access Providers and allocating the Access resources under this Section. The City may authorize Designated Access Providers to control and manage the use of any and all Access facilities provided by Grantee under this Franchise, including, without limitation, the operation of Access Channels. To the extent of such designation by the City, the Designated Access Provider shall have sole and exclusive responsibility for operating and managing such Access facilities. The City or its designee may formulate rules for the operation of the Access Channels, consistent with this Franchise. Grantee shall cooperate with the City and Designated Access Providers in the use of the Cable System and Access facilities for the provision of Access. Nothing herein shall prohibit the City from authorizing itself to be a Designated Access Provider. Nothing herein shall prohibit the City from assigning several Designated Access Providers to share a single Access Channel.

All assigned Access Channels can be used to transmit signals in any format which is technically compatible with the Cable System, including, by way of example and not limitation, video, audio only, secondary audio and/or text messages. Such uses must be in furtherance of Access purposes.

### **9.2 Initial Access Channel**

As of the Effective Date, Grantee shall provide one (1) Downstream Government and Educational Access Channel on the Cable System.

### **9.3 Access Channels On Basic Service**

All Access Channels provided to Subscribers under this Franchise shall be included by Grantee, without limitation, as a part of Basic Service.

### **9.4 Access Channel Assignments**

Grantee will use reasonable efforts to minimize the movement of Access Channel assignments.

### **9.5 Relocation of Access Channels**

Grantee shall provide the City with a minimum of ninety (90) days notice, and use its best efforts to provide one hundred twenty (120) days notice, prior to the time any Access Channel designation is changed, unless the change is required by federal law, in which case Grantee shall give the City the maximum notice possible. Any new Channel designations for the Access Channels provided pursuant to this Franchise shall be in full compliance with FCC signal quality and proof-of-performance standards.

### **9.6 Technical Quality**

The Grantee shall maintain all Access Channels at the same or better level of technical quality and reliability required by this Franchise and all other applicable laws, rules and regulations for other Channels.

## **9.7 Changes In Technology**

In the event Grantee makes any change in the Cable System and related equipment and facilities or in Grantee's signal delivery technology, which affects the signal quality or transmission of Access services or programming, Grantee shall, at its own expense, take necessary technical steps or provide necessary technical assistance, including the acquisition of all necessary equipment and training of Access personnel, to ensure that the capabilities of Access services are not diminished or adversely affected by such change. For example, this provision shall apply if the Cable System is converted from an analog to a digital format, such that the Access Channels must also be converted to digital in order to be received by Subscribers.

## **9.8 Information about Access Programming to Subscribers**

Upon request by the City, Grantee shall include information about Access programming in the installation packet provided to Subscribers. The City shall supply the materials, for insertion in the packet, in a format consistent with Grantee's requirements.

# **SECTION 10. GENERAL RIGHT-OF-WAY USE AND CONSTRUCTION**

## **10.1 Right to Construct**

Subject to Generally Applicable laws, regulations, rules, resolutions and ordinances of the City and the provisions of this Franchise, Grantee may perform all construction in the Rights-of-Way for any facility needed for the maintenance, Upgrade or extension of Grantee's Cable System.

## **10.2 Right-of-Way Meetings**

Subject to receiving reasonable advance notice, Grantee shall make reasonable effort to regularly attend and participate in meetings of the City, regarding Right-of-Way issues that may impact the Cable System.

## **10.3 Joint Trenching/Boring**

Whenever it is possible and reasonably practicable to joint trench or share bores or cuts, Grantee shall work with other providers, licensees, permittees, and franchisees so as to reduce so far as possible the number of Right-of-Way cuts within the City.

## **10.4 General Standard**

All work authorized and required hereunder shall be done in a safe, thorough and workmanlike manner. All installations of equipment shall be permanent in nature, durable and installed in accordance with good engineering practices.

## **10.5 Permits Required for Construction**

Prior to doing any work in the Right-of Way or other public property, Grantee shall apply for, and obtain, appropriate permits from the City. Grantee shall comply with the Generally Applicable ordinances, laws, or regulations regarding City Rights Of Way as may be adopted from time to time pursuant to the City's lawful police powers. Grantee shall pay all Generally Applicable and lawful fees for the requisite City permits received by Grantee.

## **10.6 Emergency Permits**

In the event that emergency repairs are necessary, Grantee shall immediately notify the City of the need for such repairs. Grantee may initiate such emergency repairs, and shall apply for appropriate permits within forty-eight (48) hours after discovery of the emergency.

## **10.7 Compliance with Applicable Codes**

(A) City Codes. Grantee shall comply with all applicable City codes, including, without limitation, the Uniform Building Code and other building codes, the Uniform Fire Code, the Uniform Mechanical Code, and zoning codes and regulations.

(B) Tower Specifications. Antenna supporting structures (towers) shall be designed for the proper loading as specified by the Electronics Industries Association (EIA), as those specifications may be amended from time to time. Antenna supporting structures (towers) shall be painted, lighted, erected and maintained in accordance with all applicable rules and regulations of the Federal Aviation Administration and all other applicable federal, State, and local codes or regulations.

(C) Safety Codes. Grantee shall comply with all applicable federal, State and City safety requirements, rules, regulations, laws and practices, and employ all necessary devices as required by applicable law during construction, operation and repair of its Cable System. By way of illustration and not limitation, Grantee shall comply with the National Electric Code, National Electrical Safety Code and Occupational Safety and Health Administration (OSHA) Standards.

## **10.8 Mapping**

Grantee shall comply with any Generally Applicable ordinances, rules and regulations of the City regarding mapping systems for users of the Rights-of-Way.

## **10.9 Minimal Interference**

Work in the Right-of-Way, on other public property, near public property, or on or near private property shall be done in a manner that causes the least interference with the rights and reasonable convenience of property owners and residents. Grantee's Cable System shall be constructed and maintained in such manner as not to interfere with sewers, water pipes, or any other property of the City, or with any other pipes, wires, conduits, pedestals, structures, or other facilities that may have been laid in the Rights-of-Way by, or under, the City's authority. The Grantee's Cable System shall be located, erected and maintained so as not to endanger or unreasonably interfere with the lives of Persons, or to interfere with new improvements the City may deem proper to make or to unnecessarily hinder or obstruct the free use of the Rights-of-Way or other public property, and shall not unreasonably interfere with the travel and use of public places by the public during the construction, repair, operation or removal thereof, and shall not obstruct or impede traffic. In the event of such interference, the City may require the removal or relocation of Grantee's lines, cables, equipment and other appurtenances from the property in question at Grantee's expense.

## **10.10 Prevent Injury/Safety**

Grantee shall provide and use any equipment and facilities necessary to control and carry Grantee's signals so as to prevent injury to the City's property or property belonging to any Person. Grantee, at its own expense, shall repair, renew, change and improve its facilities to keep them in good repair, and safe and presentable condition. All excavations made by Grantee in the Rights-of-Way shall be properly safeguarded for the prevention of accidents by the placement of adequate barriers, fences or boarding, the bounds of which, during periods of dusk and darkness, shall be clearly designated by warning lights.

### **10.11 Hazardous Substances**

(A) Grantee shall comply with any and all applicable laws, statutes, regulations and orders concerning hazardous substances relating to Grantee's Cable System in the Rights-of-Way.

(B) Upon reasonable notice to Grantee, the City may inspect Grantee's facilities in the Rights-of-Way to determine if any release of hazardous substances has occurred, or may occur, from or related to Grantee's Cable System. In removing or modifying Grantee's facilities as provided in this Franchise, Grantee shall also remove all residue of hazardous substances related thereto.

(C) Grantee agrees to indemnify the City against any claims, costs, and expenses, of any kind, whether direct or indirect, incurred by the City arising out of a release of hazardous substances caused by Grantee's Cable System.

### **10.12 Locates**

Prior to doing any work in the Right-of-Way, Grantee shall give appropriate notices to the City and to the notification association established in C.R.S. Section 9-1.5-105, as such may be amended from time to time. Notice to the City shall be given pursuant to Generally Applicable City ordinance and/or regulations, or if none, by written notice to the City or its designee at least three (3) business days prior to construction.

### **10.13 Notice to Private Property Owners**

Except in the case of emergency involving public safety or service interruptions to a large number of Subscribers, Grantee shall give reasonable advance notice to private property owners or legal tenants of work on or adjacent to private property in accordance with Exhibit A: Customer Service Standards, as the same may be amended from time to time by the City Council acting by Ordinance.

### **10.14 Underground Construction and Use of Poles**

(A) When required by general ordinances, resolutions, regulations or rules of the City or applicable State or federal law, Grantee's Cable System shall be placed underground at Grantee's expense, subject to applicable law, unless funding is generally available for such relocation to all users of the Rights-of-Way. Placing facilities underground does not preclude the use of ground-mounted appurtenances.

(B) Where electric, telephone, and other above-ground utilities are installed underground at the time of Cable System construction, or when all such wiring is subsequently placed underground, all Cable System lines shall also be placed underground with other wire line service at no expense to the City or Subscribers subject to applicable law, unless funding is generally available for such relocation to all users of the Rights-of-Way. Related Cable System equipment, such as pedestals, must be placed in accordance with the City's applicable code requirements and rules. In areas where either electric or telephone utility wiring is aerial, the Grantee may install aerial cable, except when a property owner or resident requests underground installation and agrees to bear the additional cost in excess of aerial installation. Nothing contained in this Section shall require Grantee to construct, operate, and maintain underground any ground-mounted appurtenances.

(C) The Grantee shall utilize existing poles and conduit wherever possible and reasonably practical.

(D) In the event Grantee cannot obtain the necessary poles and related facilities pursuant to a pole attachment agreement, and only in such event, then it shall be lawful for Grantee to make all needed excavations in the Rights-of-Way for the purpose of placing, erecting, laying, maintaining, repairing, and removing poles, supports



for wires and conductors, and any other facility needed for the maintenance or extension of Grantee's Cable System. All poles of Grantee shall be located as reasonably designated by the proper City authorities

(E) This Franchise does not grant, give or convey to the Grantee the right or privilege to install its facilities in any manner on specific utility poles or equipment of the City or any other Person. Copies of agreements for the use of poles, conduits or other utility facilities must be provided upon written request by the City.

(F) The Grantee and the City recognize that situations may occur in the future where the City may desire to place its own cable or conduit for Fiber Optic cable in trenches or bores opened by the Grantee. The Grantee agrees to cooperate with the City in any construction by the Grantee that involves trenching or boring, provided that the City has first provided reasonable notice to the Grantee that it is interested in sharing the trenches or bores in the area where the Grantee's construction is occurring. The Grantee shall allow the City to lay its cable, conduit and Fiber Optic cable in the Grantee's trenches and bores, provided the City shares in the cost of the trenching and boring on the same terms and conditions as the Grantee at that time shares the total cost of trenches and bores. The City shall be responsible for maintaining its respective cable, conduit and Fiber Optic cable buried in the Grantee's trenches and bores under this paragraph.

#### **10.15 Undergrounding of Multiple Dwelling Unit Drops**

In cases of single site Multiple Dwelling Units, Grantee shall minimize the number of individual aerial drop cables by installing multiple drop cables underground between the pole and Multiple Dwelling Unit where determined to be technologically feasible in agreement with the owners and/or owner's association of the Multiple Dwelling Units.

#### **10.16 Burial Standards**

(A) Depths. Unless otherwise required by law, Grantee shall comply with the following burial depth standards. In no event shall Grantee be required to bury its cable deeper than electric or gas facilities in the same portion of the Right-of-Way:

Underground cable drops from the curb shall be buried at a minimum depth of three (3) inches.

Feeder and trunk lines shall be buried at a minimum depth of eighteen (18) inches.

Subject to the requirements of the National Electric Code, if Fiber Optic cable is buried it shall be buried at a minimum depth of thirty-six (36) inches.

(B) Timeliness. Cable drops installed by Grantee to residences shall be buried according to these standards within one calendar month of initial installation, or at a time mutually agreed upon between the Grantee and the Subscriber. When freezing surface conditions or other weather conditions prevent Grantee from achieving such timetable, Grantee shall apprise the Subscriber of the circumstances and the revised schedule for burial, and shall provide the Subscriber with Grantee's telephone number and instructions as to how and when to call Grantee to request burial of the line if the revised schedule is not met.

#### **10.17 Electrical Bonding**

Grantee shall ensure that all new cable drops are properly bonded to the electrical power ground at the home, consistent with applicable code requirements. All non-conforming or non-performing cable drops shall be replaced by Grantee as necessary.

#### **10.18 Prewiring**

Any ordinance or resolution of the City which requires prewiring of subdivisions or other developments for electrical and telephone service shall be construed to include wiring for Cable Systems.

#### **10.19 Repair and Restoration of Property**

(A) The Grantee shall protect public and private property from damage. If damage occurs, the Grantee shall promptly notify the property owner within twenty-four (24) hours in writing.

(B) Whenever Grantee disturbs or damages any Right-of-Way, other public property or any private property, Grantee shall promptly restore the Right-of-Way or property to at least its prior condition, normal wear and tear excepted, at its own expense.

(C) Rights-of-Way and Other Public Property. Grantee shall warrant any restoration work performed by or for Grantee in the Right-of-Way or on other public property for one (1) year.

(D) Private Property. Upon completion of the work that caused any disturbance or damage, Grantee shall promptly commence restoration of private property, and will use best efforts to complete the restoration within seventy-two (72) hours, considering the nature of the work that must be performed.

#### **10.20 Use of Conduits by the City**

Subject to any applicable state or federal regulations or tariffs, The City may install or affix and maintain wires and equipment owned by the City for City purposes in or upon any and all of Grantee's ducts, conduits or equipment in the Rights-of-Way and other public places, to the extent space therein or thereon is reasonably available, and pursuant to all applicable ordinances and codes, provided that (a) such use by City does not interfere with the current or future use by the Grantee; (b) the City holds the Grantee harmless against and from all claims, demands, costs, or liabilities of every kind and nature whatsoever arising out of such use, including, but not limited to reasonable attorney fees and costs; (c) such use by the City is restricted to non-commercial municipal purposes; (d) the City takes reasonable precautions to prevent any use of the Grantee's conduits, ducts, or equipment in any manner that results in inappropriate use thereof, or any loss or damage to the conduit, ducts, or equipment, or the Cable System; (e) the City does not use the conduits, ducts, or equipment for any purpose that is in competition with the services offered by the Grantee, (f) at Grantee's sole discretion, the City may be required to pay a reasonable rental fee or otherwise reasonably compensate the Grantee for the use of such conduits, ducts, or equipment provided, however, the Grantee agrees that such compensation or charge shall not exceed those paid by Grantee to public utilities or the City pursuant to applicable pole or conduit agreements or codes. For the purposes of this subsection, "City purposes" includes, but is not limited to, the use of the structures and installations for City fire, police, traffic, water, telephone, and/or signal systems, but not for Cable Service in competition with Grantee. Grantee shall not deduct the value of such use of its facilities from its Franchise fee payments or from other fees payable to the City.

#### **10.21 Common Users**

(A) For the purposes of this subsection:

(1) "Attachment" means any wire, optical fiber or other cable, and any related device, apparatus or auxiliary equipment for the purpose of voice, video or data transmission.

(2) "Conduit" or "Conduit Facility" means any structure, or section thereof, containing one or more Ducts, conduits, manholes, handhole or other such facilities in Grantee's Cable System.

(3) "Duct" means a single enclosed raceway for cables, Fiber Optics or other wires.

(4) "Licensee" means any Person licensed or otherwise permitted by the City to use the Rights-of-Way.

(5) "Surplus Ducts or Conduits" are Conduit Facilities other than those occupied by Grantee or any prior Licensee, or unoccupied Ducts held by Grantee as emergency use spares, or other unoccupied Ducts that Grantee reasonably expects to use within two (2) years from the date of a request for use.

(B) Grantee acknowledges that the Rights-of-Way have a finite capacity for containing Conduits. Therefore, Grantee agrees that whenever the City determines it is impracticable to permit construction of an underground Conduit system by any other Person which may at the time have authority to construct or maintain Conduits or Ducts in the Rights-of-Way, but excluding Persons providing Cable Services in competition with Grantee, the City may require Grantee to afford to such Person the right to use Grantee's Surplus Ducts or Conduits in common with Grantee, pursuant to the terms and conditions of an agreement for use of Surplus Ducts or Conduits entered into by Grantee and the Licensee. Nothing herein shall require Grantee to enter into an agreement with such Person if, in Grantee's reasonable determination, such an agreement could compromise the integrity of the Cable System.

(C) A Licensee occupying part of a Duct shall be deemed to occupy the entire Duct.

(D) Grantee shall give a Licensee a minimum of one hundred twenty (120) days notice of its need to occupy a licensed Conduit and shall propose that the Licensee take the first feasible action as follows:

(1) Pay revised Conduit rent designed to recover the cost of retrofitting the Conduit with multiplexing, Fiber Optics or other space-saving technology sufficient to meet Grantee's space needs;

(2) Pay revised Conduit rent based on the cost of new Conduit constructed to meet Grantee's space needs;

(3) Vacate the needed Ducts or Conduit; or

(4) Construct and maintain sufficient new Conduit to meet Grantee's space needs.

(E) When two or more Licensees occupy a section of Conduit Facility, the last Licensee to occupy the Conduit Facility shall be the first to vacate or construct new Conduit. When Conduit rent is revised because of retrofitting, space-saving technology or construction of new Conduit, all Licensees shall bear the increased cost.

(F) All Attachments shall meet applicable local, State, and federal clearance and other safety requirements, be adequately grounded and anchored, and meet the provisions of contracts executed between Grantee and the Licensee. Grantee may, at its option, correct any attachment deficiencies and charge the Licensee for its costs. Each Licensee shall pay Grantee for any fines, fees, damages or other costs the Licensee's attachments cause Grantee to incur.

(G) In order to enforce the provisions of this subsection with respect to Grantee, the City must demonstrate that it has required that all similarly situated users of the Rights-of-Way to comply with the provisions of this subsection.

## **10.22 Acquisition of Facilities**

Upon Grantee's acquisition of facilities in any City Right-of-Way, or upon the addition to the City of any area in which Grantee owns or operates any facility, Grantee shall, at the City's request, submit to the City a statement describing all facilities involved, whether authorized by franchise, permit, license or other prior right, and specifying the location of all such facilities to the extent Grantee has possession of such information. Such facilities shall immediately be subject to the terms of this Franchise.

## **10.23 Discontinuing Use/Abandonment of Cable System Facilities**

Whenever Grantee intends to discontinue using any facility within the Rights-of-Way, Grantee shall submit to the City a complete description of the facility and the date on which Grantee intends to discontinue using the facility. Grantee may remove the facility or request that the City permit it to remain in place. Notwithstanding Grantee's request that any such facility remain in place, the City may require Grantee to remove the facility from the Right-of-Way or modify the facility to protect the public health, welfare, safety, and convenience, or otherwise serve the public interest. The City may require Grantee to perform a reasonable combination of modification and removal of the facility. Grantee shall complete such removal or modification in accordance with a reasonable schedule set by the City. Until such time as Grantee removes or modifies the facility as reasonably directed by the City, or until the rights to and responsibility for the facility are accepted by another Person, Grantee shall retain all liability for such facility and be responsible for all necessary repairs and relocations of the facility, as well as maintenance of the Right-of-Way, in the same manner and degree as if the facility were in active use. If Grantee abandons its facilities, the City may choose to use such facilities for any purpose whatsoever including, but not limited to, Access purposes. If the City chooses to utilize any such abandoned facilities, Grantee's liability for those facilities shall cease.

## **10.24 Movement of Cable System Facilities For City Purposes**

The City shall have the right to require Grantee to relocate, remove, replace, modify or disconnect Grantee's facilities and equipment located in the Rights-of-Way or on any other property of the City in the event of an emergency or when reasonable public convenience requires such change (for example, without limitation, by reason of traffic conditions, public safety, Right-of-Way vacation, Right-of-Way construction, change or establishment of Right-of-Way grade, installation of sewers, drains, gas or water pipes, or any other types of structures or improvements by the City for public purposes). Such work shall be performed at no cost to the City. Except during an emergency, the City shall provide reasonable notice to Grantee, not to be less than 10 business days, and allow Grantee with the opportunity to perform such action. In the event of any capital improvement project exceeding \$500,000 in expenditures by the City which requires the removal, replacement, modification or disconnection of Grantee's facilities or equipment, the City shall provide at least sixty (60) days written notice to Grantee. Following notice by the City, Grantee shall relocate, remove, replace, modify or disconnect any of its facilities or equipment within any Right-of-Way, or on any other property of the City. If the City requires Grantee to relocate its facilities located within the Rights-of-Way, the City shall make a reasonable effort to provide Grantee with an alternate location within the Rights-of-Way. If funds are generally made available to users of the Rights-of-Way for such relocation, Grantee shall be entitled to its pro rata share of such funds.

If the Grantee fails to complete this work within the time prescribed and to the City's reasonable satisfaction, the City may cause such work to be done and bill the reasonable cost of the work to the Grantee, including all reasonable costs and expenses incurred by the City due to Grantee's delay. In such event, the City shall not be liable for any damage to any portion of Grantee's Cable System unless the City acted in a negligent manner. Within thirty (30) days of receipt of an itemized list of those costs, the Grantee shall pay the City.

#### **10.25 Movement of Cable System Facilities for Other Franchise Holders**

If any removal, replacement, modification or disconnection of the Cable System is required to accommodate the construction, operation or repair of the facilities or equipment of another City franchise holder, Grantee shall, after at least thirty (30) days advance written notice, take action to effect the necessary changes requested by the responsible entity. Grantee may require that the costs associated with the removal or relocation be paid by the benefited party at no cost to the City.

#### **10.26 Temporary Changes for Other Permittees**

At the request of any Person holding a valid permit and upon reasonable advance notice, Grantee shall temporarily raise, lower or remove its wires as necessary to permit the moving of a building, vehicle, equipment or other item. The expense of such temporary changes must be paid by the permit holder, and Grantee may require a reasonable deposit of the estimated payment in advance.

#### **10.27 Reservation of City Use of Right-of-Way**

Nothing in this Franchise shall prevent the City or public utilities owned, maintained or operated by public entities other than the City from constructing sewers; grading, paving, repairing or altering any Right-of-Way; laying down, repairing or removing water mains; or constructing or establishing any other public work or improvement. All such work shall be done, insofar as practicable, so as not to obstruct, injure or prevent the use and operation of Grantee's Cable System.

#### **10.28 Tree Trimming**

Grantee may prune or cause to be pruned, using proper pruning practices, any tree in the City's Rights-of-Way which interferes with Grantee's Cable System. Grantee shall comply with any general ordinance or regulations of the City regarding tree trimming. Except in emergencies, Grantee may not prune trees at a point below thirty (30) feet above sidewalk grade until one (1) week written notice has been given to the owner or occupant of the premises abutting the Right-of-Way in or over which the tree is growing. The owner or occupant of the abutting premises may prune such tree at his or her own expense during this one (1) week period. If the owner or occupant fails to do so, Grantee may prune such tree at its own expense. For purposes of this subsection, emergencies exist when it is necessary to prune to protect the public or Grantee's facilities from imminent danger only.

#### **10.29 Inspection of Construction and Facilities**

The City may inspect any of Grantee's facilities, equipment or construction at any time upon at least five business days notice, or, in case of emergency, upon demand without prior notice. If an unsafe condition is found to exist, the City, in addition to taking any other action permitted under applicable law, may order Grantee, in writing, to make the necessary repairs and alterations specified therein forthwith to correct the unsafe condition by a time the City establishes. The City has the right to correct, inspect, administer and repair the unsafe condition if Grantee fails to do so, and to reasonably charge Grantee therefor.

#### **10.30 Stop Work**

(A) On notice from the City that any work is being performed contrary to the provisions of this Franchise, or in an unsafe or dangerous manner as determined by the City, or in violation of the terms of any Generally Applicable permit, laws, regulations, ordinances, or standards, the work may immediately be stopped by the City.

(B) The stop work order shall:

- (1) Be in writing;
- (2) Be given to the Person doing the work, or posted on the work site;
- (3) Be sent to Grantee by overnight delivery or by facsimile at the address given herein;
- (4) Indicate the nature of the alleged violation or unsafe condition; and
- (5) Establish conditions under which work may be resumed.

### **10.31 Work of Contractors and Subcontractors**

Grantee's contractors and subcontractors shall be licensed and bonded in accordance with the City's Generally Applicable ordinances, regulations and requirements. Work by contractors and subcontractors is subject to the same restrictions, limitations and conditions as if the work were performed by Grantee. Grantee shall be responsible for all work performed by its contractors and subcontractors and others performing work on its behalf as if the work were performed by it, and shall ensure that all such work is performed in compliance with this Franchise and other applicable law, and shall be jointly and severally liable for all damages and correcting all damage caused by them. It is Grantee's responsibility to ensure that contractors, subcontractors or other Persons performing work on Grantee's behalf are familiar with the requirements of this Franchise and other applicable laws governing the work performed by them.

## **SECTION 11. CABLE SYSTEM CONFIGURATION, TECHNICAL STANDARDS AND TESTING**

### **11.1 Subscriber Network/System Upgrade**

(A) At such time as the Grantee undertakes and completes any Upgrade, Grantee shall send written notice to the City. The City shall have 90 days from receipt of notice of completion to review the sweep analysis records kept by the Grantee which verify the completion of the Cable System bandwidth expansion, and to complete such technical inspections as may be reasonably necessary to verify that the other components of the Upgrade are complete. The Director of Administrative Services or his designee may require the Grantee to provide additional facts and information, in his/her reasonably exercised discretion, necessary to verify the completion of the Upgrade. Upon its completion of this review and inspection, the City shall notify the Grantee in writing of the City's position concerning the completion of the Upgrade.

(B) The Cable System shall at all times be operated and maintained in compliance with FCC standards on closed captioning. Equipment must be installed so that all local signals received in stereo or with secondary audio tracks (broadcast and Access) are retransmitted in those same formats.

(C) All construction shall be subject to the City's permitting process.

(D) Grantee and City shall meet, at the City's request, to discuss construction before it commences.

(E) Grantee will take prompt corrective action if it finds that any facilities or equipment on the Cable System are not operating as expected, or if it finds that facilities and equipment do not comply with the requirements of this Franchise or applicable law.

(F) Grantee's construction decisions shall be based solely upon legitimate engineering decisions and shall not take into consideration the income level of any particular community within the Franchise area.

## **11.2 State of the Art**

The City shall not be restricted from holding any hearing at any time to review whether or not the Cable System and the Cable Services offered by the Grantee are meeting demonstrated community needs. The parties recognize that, as of the Effective Date, the City is not permitted to require the provision of specific video programming pursuant to this subsection.

## **11.3 Standby Power**

Grantee shall maintain standby power system supplies, rated for at least two (2) hours duration, throughout the trunk and distribution networks.

## **11.4 Emergency Alert Capability**

(A) Grantee shall provide an operating Emergency Alert System (“EAS”) in accordance with and as required by the provisions of FCC Regulations, 47 C.F.R. Part II, and as such provision may from time to time be amended. Grantee shall test the EAS as required by federal law. Upon request, the City shall be permitted to participate in and/or witness any EAS testing. If the test indicates that the EAS is not performing consistent with FCC requirements, Grantee shall make any necessary adjustment to the EAS, and the EAS shall be retested as required by federal law.

## **11.5 Technical Performance**

The technical performance of the Cable System shall meet or exceed all applicable technical standards, as they may be amended from time to time, regardless of the transmission technology utilized. The City shall have the full authority permitted by applicable law to enforce compliance with these technical standards.

## **11.6 Cable System Performance Testing**

(A) Grantee shall, at Grantee's expense, perform the following tests on its Cable System:

(1) All tests required by the FCC;

(2) All other tests reasonably necessary to determine compliance with technical standards adopted by the FCC at any time during the term of this Franchise.

(B) Grantee shall maintain written records of all results of its Cable System tests, performed by or for Grantee, for as long as required by Federal law. Copies of such test results will be available to the City upon written request.

(C) Grantee shall be required to promptly take such corrective measures as are necessary to correct any performance deficiencies fully and to prevent their recurrence as far as possible. Grantee's failure to correct deficiencies identified through this testing process may be considered a material violation of this Franchise

## **11.7 Additional Tests**

Where there exists other evidence which in the reasonable judgment of the City casts doubt upon the reliability or technical quality of Cable Service, the City shall have the right and authority to require Grantee to test, analyze and report on the performance of the Cable System. Grantee shall reasonably cooperate with the City in performing such testing and shall prepare the results and a report, if requested, within thirty (30) days after testing. Such report shall include the following information:

- (A) the nature of the complaint or problem which precipitated the special tests;
- (B) the Cable System component tested;
- (C) the equipment used and procedures employed in testing;
- (D) the method, if any, in which such complaint or problem was resolved; and
- (E) any other information pertinent to said tests and analysis which may be required.

## **SECTION 12. SERVICE AVAILABILITY, INTERCONNECTION AND SERVICE TO SCHOOLS AND PUBLIC BUILDINGS**

### **12.1 Universal Service**

Grantee shall not arbitrarily refuse to provide Cable Services to any Person within its Franchise Area. Subject to Section 12.2, all Dwelling Units, Multiple Dwelling Units and commercial establishments in the Franchise Area shall have the same availability of Cable Services from Grantee's Cable System under non-discriminatory rates subject to Section 4.3, and reasonable terms and conditions. The City acknowledges that the Grantee cannot control the dissemination of particular Cable Services beyond the point of demarcation at a Multiple Dwelling Unit. Notwithstanding the foregoing, Grantee may introduce new or expanded Cable Services on a geographically phased basis, where such services require an Upgrade of the Cable System. Grantee may also charge for line extensions and non-standard installations pursuant to subsection 12.2.

### **12.2 Service Availability**

(A) In General. Except as otherwise provided herein, Grantee shall provide Cable Service within seven (7) days of a request by any Person within the City. For purposes of this subsection, a request shall be deemed made on the date of signing a service agreement, receipt of funds by Grantee, receipt of a written request by Grantee or receipt by Grantee of a verified verbal request. Grantee shall provide such service:

(1) At a non-discriminatory installation charge for a standard installation, consisting of a one hundred twenty-five (125) foot drop connecting to an inside wall for Residential Subscribers, with additional charges for non-standard installations computed according to a non-discriminatory methodology for such installations, adopted by Grantee;

(3) At non-discriminatory monthly rates for Residential Subscribers.

(B) Service to Multiple Dwelling Units. The Grantee shall offer the individual units of a Multiple Dwelling Unit all Cable Services offered to other Dwelling Units in the City and shall individually wire units upon request of the property owner or renter who has been given written authorization by the owner; provided, however, that any such offering is conditioned upon the Grantee having legal access to said unit. The City acknowledges that the Grantee cannot control the dissemination of particular Cable Services beyond the point of demarcation at a Multiple Dwelling Unit.

(C) Whenever the Grantee receives a request for Cable Service from a customer in a contiguous unserved area where there are at least sixty (60) residences within 5280 cable-bearing strand feet (one cable mile) from the portion of the Grantee's trunk or distribution cable which is to be extended, it shall extend its Cable System to such customer at no cost to said customer for the Cable System extension, other than the published standard installation fees charged to all customers. Notwithstanding the foregoing, the Grantee shall have the right,



but not the obligation, to extend the Cable System into any portion of the Service Area where another operator is providing Cable Service, into any annexed area which is not contiguous to the present Service Area of the Grantee, or into any area which is financially or technically infeasible due to extraordinary circumstances, such as a freeway crossing.

(D) Customer Charges for Extensions of Service. No customer shall be refused service arbitrarily, however, for unusual circumstances, such as a customer's request to locate the cable drop underground, the existence of more than one hundred twenty-five (125) feet of distance from distribution cable to connection of service to customers, or a request from a customer in an area which does not meet the density requirement of subsection (C) above, service may be made available on the basis of a capital contribution in aid of construction, including cost of material, labor and easements. For the purpose of determining the amount of capital contribution in aid of construction to be borne by the Grantee and customers in the area in which service may be expanded, the Grantee will contribute an amount equal to the construction and other costs per mile, multiplied by a fraction whose numerator equals the actual number of residences per 5280 cable-bearing strand feet of its trunk or distribution cable and whose denominator equals sixty (60). Customers who request service hereunder will bear the remainder of the construction and other costs on a pro rata basis. The Grantee may require that the payment of the capital contribution in aid of construction borne by such potential customers be paid in advance.

### **12.3 Connection of Public Facilities**

Grantee shall, at no cost to the City, continue to provide one outlet of Basic Service and Expanded Basic Service to all City owned and occupied buildings, schools and public libraries where such service is provided as of the Effective Date of this Franchise. For purposes of this subsection, "school" means all State-accredited K-12 public and private schools. In addition, Grantee shall provide, at no cost to the City or other entity, one outlet of Basic and Expanded Basic Service to additional City-owned or leased and City occupied buildings, additional schools and libraries upon request if the drop line from the feeder cable to such building does not exceed one hundred twenty-five feet (125') or if the City or other entity agrees to pay the incremental cost of such drop line in excess of one hundred twenty-five feet (125'), including the cost of such excess labor and materials. Such obligation to provide free Cable Service shall not extend to areas of City buildings where the Grantee would normally enter into a commercial contract to provide such Cable Service. Outlets of Basic and Expanded Basic Service provided in accordance with this subsection may be used to distribute Cable Services throughout such buildings; provided such distribution can be accomplished without causing Cable System disruption and general technical standards are maintained. Such outlets may only be used for lawful purposes and shall not be used to entertain public groups or be used for commercial purposes.

## **SECTION 13. FRANCHISE VIOLATIONS**

### **13.1 Procedure for Remedying Franchise Violations**

(A) If the City believes that Grantee has failed to perform any obligation under this Franchise or has failed to perform in a timely manner, the City shall notify Grantee in writing, stating with reasonable specificity the nature of the alleged default. Grantee shall have thirty (30) days from the receipt of such notice to:

- (1) respond to the City, contesting the City's assertion that a default has occurred, and requesting a meeting in accordance with subsection (B), below; or
- (2) cure the default; or
- (3) notify the City that Grantee cannot cure the default within the thirty (30) days, because of the nature of the default. In the event the default cannot be cured within thirty (30) days, Grantee shall promptly take all reasonable steps to cure the default and notify the City in writing and in detail as to the exact steps that will be

taken and the projected completion date. In such case, the City may set a meeting in accordance with subsection (B) below to determine whether additional time beyond the thirty (30) days specified above is indeed needed, and whether Grantee's proposed completion schedule and steps are reasonable.

(B) If Grantee does not cure the alleged default within the cure period stated above, or by the projected completion date under subsection (A)(3), or denies the default and requests a meeting in accordance with (A)(1), or the City orders a meeting in accordance with subsection (A)(3), the City shall set a meeting to investigate said issues or the existence of the alleged default. The City shall notify Grantee of the meeting in writing and such meeting shall take place no less than thirty (30) days after Grantee's receipt of notice of the meeting. At the meeting, Grantee shall be provided an opportunity to be heard and to present evidence in its defense.

(C) If, after the meeting, the City determines that a default exists, the City shall order Grantee to correct or remedy the default or breach within fifteen (15) days or within such other reasonable time frame as the City shall determine. In the event Grantee does not cure within such time to the City's reasonable satisfaction, the City may:

(1) Commence an action at law for monetary damages or where applicable withdraw an amount from the construction bond as monetary damages;

(2) Recommend the revocation of this Franchise pursuant to the procedures in subsection 13.2; or

(3) Recommend any other legal or equitable remedy available under this Franchise or any applicable law.

(D) The determination as to whether a violation of this Franchise has occurred shall be within the discretion of the City, provided that any such final determination may be subject to appeal to a court of competent jurisdiction under applicable law.

### **13.2 Revocation**

(A) In addition to revocation in accordance with other provisions of this Franchise, the City may revoke this Franchise and rescind all rights and privileges associated with this Franchise in the following circumstances, each of which represents a material breach of this Franchise:

(1) If Grantee fails to perform any material obligation under this Franchise;

(2) If Grantee willfully fails for more than forty-eight (48) consecutive hours to provide continuous and uninterrupted Cable Service;

(3) If Grantee attempts to evade any material provision of this Franchise or to practice any fraud or deceit upon the City or Subscribers; or

(4) If Grantee becomes insolvent, or if there is an assignment for the benefit of Grantee's creditors;

(5) If Grantee makes a material misrepresentation of fact in the application for or negotiation of this Franchise.

(B) Following the procedures set forth in Subsection 14.1(A) and (B), and prior to forfeiture or termination of the Franchise, the City shall give written notice to the Grantee of its intent to revoke the Franchise. The notice shall set forth the exact nature of the noncompliance.

(C) Any proceeding under the paragraph above shall be conducted by the City Council or its designee and open to the public. Grantee shall be afforded at least sixty (60) days prior written notice of such proceeding.

(1) At such proceeding, Grantee shall be provided a fair opportunity for full participation, including the right to be represented by legal counsel, to introduce evidence and to call and question witnesses. A complete verbatim record and transcript shall be made of such proceeding and the cost shall be shared equally between the parties. The City Council or its designee shall hear any Persons interested in the revocation, and shall allow Grantee, in particular, an opportunity to state its position on the matter.

(2) Within ninety days after the hearing, the City Council shall determine whether to revoke the Franchise and declare that the Franchise is revoked; or if the breach at issue is capable of being cured by Grantee, direct Grantee to take appropriate remedial action within the time and in the manner and on the terms and conditions that the City Council or its designee determines are reasonable under the circumstances. If the City determines that the Franchise is to be revoked, the City shall set forth the reasons for such a decision and shall transmit a copy of the decision to the Grantee. Grantee shall be bound by the City's decision to revoke the Franchise unless Grantee appeals the decision to a court of competent jurisdiction within thirty (30) days of the date of the decision.

(3) Grantee shall be entitled to such relief as the Court may deem appropriate.

(4) The City Council may at its sole discretion take any lawful action it deems appropriate to enforce the City's rights under the Franchise in lieu of revocation of the Franchise.

### **13.3 Procedures in the Event of Termination or Revocation**

(A) If this Franchise expires without renewal and is not extended, or is otherwise lawfully terminated or revoked, the City may, subject to applicable law:

(1) Allow Grantee to maintain and operate its Cable System on a month-to-month basis or short-term extension of this Franchise for not less than six (6) months, unless a sale of the Cable System can be closed sooner or Grantee demonstrates to the City's satisfaction that it needs additional time to complete the sale. Grantee's continued operation of the Cable System during the six-month period or such other period as the parties may agree, shall not be deemed to be a waiver nor an extinguishment of any rights of either Grantee or City; or

(2) Purchase Grantee's Cable System in accordance with the procedures set forth in subsection 14.4, below.

(B) In the event that a sale has not been completed in accordance with subsections (A)(1) and/or (A)(2) above, the City may order the removal of the above-ground Cable System facilities and such underground facilities from the City at Grantee's sole expense within a reasonable period of time as determined by the City. In removing its plant, structures and equipment, Grantee shall refill, at its own expense, any excavation that is made by it and shall leave all Rights-of-Way, public places and private property in as good condition as that prevailing prior to Grantee's removal of its equipment without affecting the electrical or telephone cable wires or attachments. The indemnification and insurance provisions shall remain in full force and effect during the period of removal.

(C) If Grantee fails to complete any removal required by subsection 14.3 (B) to the City's reasonable satisfaction, after written notice to Grantee, the City may cause the work to be done and Grantee shall reimburse the City for the reasonable costs incurred within thirty (30) days after receipt of an itemized list of the costs.

(D) The City may seek legal and equitable relief to enforce the provisions of this Franchise.

### **13.4 Purchase of Cable System**

(A) If at any time this Franchise is revoked, terminated, or not renewed upon expiration in accordance with the provisions of federal law, the City shall have the option to purchase the Cable System.

(B) The City may, within sixty (60) days of such events as described in Subsection (A), offer in writing to purchase Grantee's Cable System. Grantee shall have thirty (30) days from receipt of a written offer from the City within which to accept or reject the offer.

(C) In any case where the City elects to purchase the Cable System, the purchase shall be closed within one hundred twenty (120) days of the date of the City's audit of a current profit and loss statement of Grantee. The City shall pay for the Cable System in cash or certified funds, and Grantee shall deliver appropriate bills of sale and other instruments of conveyance.

(D) For the purposes of this subsection, the price for the Cable System shall be determined as follows:

(1) In the case of the expiration of the Franchise without renewal, at fair market value determined on the basis of Grantee's Cable System valued as a going concern, but with no value allocated to the Franchise itself.

(2) In the case of revocation for cause, the equitable price of Grantee's Cable System.

### **13.5 Receivership and Foreclosure**

(A) At the option of the City, subject to applicable law, this Franchise may be revoked one hundred twenty (120) days after the appointment of a receiver or trustee to take over and conduct the business of Grantee whether in a receivership, reorganization, bankruptcy or other action or proceeding, unless:

(1) The receivership or trusteeship is vacated within one hundred twenty (120) days of appointment; or

(2) The receivers or trustees have, within one hundred twenty (120) days after their election or appointments, fully complied with all the terms and provisions of this Franchise, and have remedied all defaults under the Franchise. Additionally, the receivers or trustees shall have executed an agreement duly approved by the court having jurisdiction, by which the receivers or trustees assume and agree to be bound by each and every term, provision and limitation of this Franchise.

(B) If there is a foreclosure or other involuntary sale of the whole or any part of the plant, property and equipment of Grantee, the City may serve notice of revocation on Grantee and to the purchaser at the sale, and the rights and privileges of Grantee under this Franchise shall be revoked thirty (30) days after service of such notice, unless:

(1) The City has approved the transfer of the Franchise, in accordance with the procedures set forth in this Franchise and as provided by law; and

(2) The purchaser has covenanted and agreed with the City to assume and be bound by all of the terms and conditions of this Franchise.

### **13.6 No Monetary Recourse Against the City**

Grantee shall not have any monetary recourse against the City or its officers, officials, boards, commissions, or employees for any loss, costs, expenses or damages arising out of any provision or requirement of this Franchise or the enforcement thereof, in accordance with the provisions of applicable federal, State and local law. The rights of the City under this Franchise are in addition to, and shall not be read to limit, any immunities the City may enjoy under federal, State or local law.

### **13.7 Alternative Remedies**

No provision of this Franchise shall be deemed to bar the right of the City to seek or obtain judicial relief from a violation of any provision of the Franchise or any rule, regulation, requirement or directive promulgated thereunder. Neither the existence of other remedies identified in this Franchise nor the exercise thereof shall be deemed to bar or otherwise limit the right of the City to recover monetary damages for such violations by Grantee, or to seek and obtain judicial enforcement of Grantee's obligations by means of specific performance, injunctive relief or mandate, or any other remedy at law or in equity.

## **SECTION 14. FRANCHISE RENEWAL AND TRANSFER**

### **14.1 Renewal**

(A) The City and Grantee agree that any proceedings undertaken by the City that relate to the renewal of the Franchise shall be governed by and comply with the provisions of Section 626 of the Cable Act, unless the procedures and substantive protections set forth therein shall be deemed to be preempted and superseded by the provisions of any subsequent provision of federal or State law.

(B) In addition to the procedures set forth in said Section 626(a), the City agrees to notify Grantee of the completion of its assessments regarding the identification of future cable-related community needs and interests, as well as the past performance of Grantee under the then current Franchise term. Notwithstanding anything to the contrary set forth herein, Grantee and City agree that at any time during the term of the then current Franchise, while affording the public adequate notice and opportunity for comment, the City and Grantee may agree to undertake and finalize negotiations regarding renewal of the then current Franchise and the City may grant a renewal thereof. Grantee and City consider the terms set forth in this subsection to be consistent with the express provisions of Section 626 of the Cable Act.

### **14.2 Transfer of Ownership or Control**

(A) The Cable System and this Franchise shall not be sold, assigned, transferred, leased or disposed of, either in whole or in part, either by involuntary sale or by voluntary sale, merger or consolidation; nor shall title thereto, either legal or equitable, or any right, interest or property therein pass to or vest in any Person or entity without the prior written consent of the City, which consent shall be by the City Council, acting by ordinance or resolution.

(B) The Grantee shall promptly notify the City of any actual or proposed change in, or transfer of, or acquisition by any other party of control of the Grantee. The word "control" as used herein is not limited to majority stockholders but includes actual working control in whatever manner exercised. Every change, transfer or acquisition of control of the Grantee shall make this Franchise subject to cancellation unless and until the City shall have consented in writing thereto.

(C) The parties to the sale or transfer shall make a written request to the City for its approval of a sale or transfer and furnish all information required by law and the City.

(D) In seeking the City's consent to any change in ownership or control, the proposed transferee shall indicate whether it:

(1) Has ever been convicted or held liable for acts involving deceit including any violation of federal, State or local law or regulations, or is currently under an indictment, investigation or complaint charging such acts;

(2) Has ever had a judgment in an action for fraud, deceit, or misrepresentation entered against the proposed transferee by any court of competent jurisdiction;

(3) Has pending any material legal claim, lawsuit, or administrative proceeding arising out of or involving a cable system;

(4) Is financially solvent, by submitting financial data including financial statements that are audited by a certified public accountant who may also be an officer of the transferee, along with any other data that the City may reasonably require; and

(5) Has the financial, legal and technical capability to enable it to maintain and operate the Cable System for the remaining term of the Franchise.

(E) The City shall act by ordinance or resolution on the request within one hundred twenty (120) days of the request, provided it has received all legally required information. Subject to the foregoing, if the City fails to render a final decision on the request within one hundred twenty (120) days, such request shall be deemed granted unless the requesting party and the City agree to an extension of time.

(F) Within thirty (30) days of any transfer or sale, if approved or deemed granted by the City, Grantee shall file with the City a copy of the deed, agreement, lease or other written instrument evidencing such sale or transfer of ownership or control, certified and sworn to as correct by Grantee and the transferee, and the transferee shall file its written acceptance agreeing to be bound by all of the provisions of this Franchise, subject to applicable law. In the event of a change in control, in which the Grantee is not replaced by another entity, the Grantee will continue to be bound by all of the provisions of the Franchise, subject to applicable law, and will not be required to file an additional written acceptance.

(G) In reviewing a request for sale or transfer, the City may inquire into the legal, technical and financial qualifications of the prospective controlling party or transferee, and Grantee shall assist the City in so inquiring. The City may condition said sale or transfer upon such terms and conditions as it deems reasonably appropriate, provided, however, any such terms and conditions so attached shall be related to the legal, technical and financial qualifications of the prospective controlling party or transferee and to the resolution of outstanding and unresolved issues of noncompliance with the terms and conditions of this Franchise by Grantee.

(H) Notwithstanding anything to the contrary in this subsection, the prior approval of the City shall not be required for any sale, assignment or transfer of the Franchise or Cable System to an Affiliate of Grantee, provided that the proposed assignee or transferee must show financial responsibility as may be reasonably determined necessary by the City and must agree in writing to comply with all of the provisions of the Franchise. Further, Grantee may pledge the assets of the Cable System for the purpose of financing without the consent of the City; provided that such pledge of assets shall not impair or mitigate Grantee's responsibilities and capabilities to meet all of its obligations under the provisions of this Franchise.

## **SECTION 15. SEVERABILITY**

If any Section, subsection, paragraph, term or provision of this Franchise is determined to be illegal, invalid or unconstitutional by any court or agency of competent jurisdiction, such determination shall have no effect on the validity of any other Section, subsection, paragraph, term or provision of this Franchise, all of which will remain in full force and effect for the term of the Franchise.

## **SECTION 16. MISCELLANEOUS PROVISIONS**

### **16.1 Preferential or Discriminatory Practices Prohibited**

**NO DISCRIMINATION IN EMPLOYMENT.** In connection with the performance of work under this Franchise, the Grantee agrees not to refuse to hire, discharge, promote or demote, or discriminate in matters of compensation against any Person otherwise qualified, solely because of race, color, religion, national origin, gender, age, military status, sexual orientation, marital status, or physical or mental disability; and the Grantee further agrees to insert the foregoing provision in all subcontracts hereunder. Throughout the term of this Franchise, Grantee shall fully comply with all equal employment or non-discrimination provisions and requirements of federal, State and local laws, and in particular, FCC rules and regulations relating thereto.

### **16.2 Notices**

Throughout the term of the Franchise, each party shall maintain and file with the other a local address for the service of notices by mail. All notices shall be sent postage prepaid to such respective address and such notices shall be effective upon the date of mailing. These addresses may be changed by the City or the Grantee by written notice at any time. At the Effective Date of this Franchise:

Grantee's address shall be:

BRESNAN COMMUNICATIONS  
c/o General Manager  
2502 Foresight Circle  
Grand Junction, Colorado 81505

With a copy to:

BRESNAN COMMUNICATIONS  
c/o

Attention: Legal Department

The City's address shall be:

City of Grand Junction  
c/o Director of Administrative Services and Finance  
250 N. 5<sup>th</sup> Street  
Grand Junction, Colorado 81501

With a copy to:

City of Grand Junction  
c/o City Attorney

250 N. 5<sup>th</sup> Street  
Grand Junction, Colorado 81501

**16.3 Descriptive Headings**

The headings and titles of the Sections and subsections of this Franchise are for reference purposes only, and shall not affect the meaning or interpretation of the text herein.

**16.4 Publication Costs to be Borne by Grantee**

Grantee shall reimburse the City for all costs of publication of this Franchise, if publication is required.

**16.5 Binding Effect**

This Franchise shall be binding upon the parties hereto, their permitted successors and assigns.

**16.6 No Joint Venture**

Nothing herein shall be deemed to create a joint venture or principal-agent relationship between the parties, and neither party is authorized to, nor shall either party act toward third Persons or the public in any manner that would indicate any such relationship with the other.

**16.7 Waiver**

The failure of the City at any time to require performance by the Grantee of any provision hereof shall in no way affect the right of the City hereafter to enforce the same. Nor shall the waiver by the City of any breach of any provision hereof be taken or held to be a waiver of any succeeding breach of such provision, or as a waiver of the provision itself or any other provision.

**16.8 Reasonableness of Consent or Approval**

Whenever under this Franchise “reasonableness” is the standard for the granting or denial of the consent or approval of either party hereto, such party shall be entitled to consider public and governmental policy, moral and ethical standards as well as business and economic considerations.

**16.9 Entire Agreement**

This Franchise and all Exhibits represent the entire understanding and agreement between the parties hereto with respect to the subject matter hereof and supersede all prior oral negotiations between the parties.

IN WITNESS WHEREOF, this Franchise is signed in the name of the City of Grand Junction, Colorado this \_\_\_\_\_ day of \_\_\_\_\_, 200\_\_.

ATTEST:

CITY OF GRAND JUNCTION, COLORADO:

\_\_\_\_\_  
City Clerk

\_\_\_\_\_  
Mayor

APPROVED AS TO FORM:



\_\_\_\_\_  
City Attorney

UNCONDITIONAL ACCEPTANCE OF FRANCHISE

The undersigned, BRESNAN COMMUNICATIONS hereby accepts this Franchise passed and adopted by the City of Grand Junction pursuant to Ordinance No. \_\_\_\_\_ and approved by the electorate on May \_\_ 2005 and does hereby unconditionally agree that it will comply with and abide by all the provisions, terms and conditions of the Franchise, subject to applicable federal, state and local law, and that as written and to the best of its knowledge, all terms of the Franchise are consistent with federal, state and local law, as existed on the date this acceptance is signed.

Accepted and approved this \_\_\_\_ day of \_\_\_\_\_, 2005.

BRESNAN COMMUNICATIONS

\_\_\_\_\_

Title: \_\_\_\_\_

**EXHIBIT A:  
PUBLIC BUILDINGS**

- 1) **Grand Junction City Hall**
- 2) **Grand Junction Fire Station 1-5**
- 3) **Grand Junction Parks and Recreation Department**
- 4) **Persigo Wastewater Treatment Facility**
- 5) **City Shops**
- 6) **?**