

**LICENSE AND CONSTRUCTION STANDARDS AGREEMENT FOR  
EMERY TELCOMMUNICATIONS AND VIDEO, INC FIBER OPTIC CABLE**

THIS LICENSE AND CONSTRUCTION STANDARDS AGREEMENT is made and entered into this 8 day of August 2016 by and between the CITY OF GRAND JUNCTION, COLORADO, a home rule municipal corporation, ("City") and EMERY TELCOMMUNICATIONS AND VIDEO, INC, ("LICENSEE").

For and in consideration of the mutual promises and covenants contained herein, and for other good and valuable consideration the receipt and sufficiency of which is hereby acknowledged, the City and Licensee agree as follows:

**SECTION 1. DEFINITIONS**

For the purposes of this LICENCE AND CONSTRUCTION STANDARDS AGREEMENT ("Agreement") the following words and phrases shall have the meaning given herein. When not inconsistent within the context, words used in the present tense include the future tense and words in the single number include the plural number. The word "shall" is mandatory and not merely directory.

- a. "City" – means the City of Grand Junction, Colorado.
- b. "Facilities" – means telephone and telcommunication lines, conduits, manholes, ducts, wires, cables, pipes, poles, towers, vaults, appliances, optic fiber, and all equipment used to provide fiber optic interconnection and services.
- c. "Licensee" – means Emery Telcom. References to Licensee shall also include, as appropriate, any and all successors and assigns.
- d. "Public Improvement" – means any existing or contemplated facility, building or capital improvement project, owned, occupied or used by the City, including without limitation streets, alleys, sidewalks, sewer, water, drainage, right-of-way improvements.
- e. "Right-of-way" – means the real property (or interest in real property such as an easement) in which the City has a dedicated, acquired or lawfully claimed interest on, below, above or over present and future streets, utilities and utility corridor(s) if separate from the streets, alleys, avenues, roads, highways, parkways or boulevards dedicated or acquired as an easement or right-of-way. The term does not include the airspace above a right-of-way with regard to wireless telecommunications or other non-wire telecommunications or broadcast service, easements obtained by utilities or private easements in platted subdivisions or tracts in the real property.
- f. "Services" – means providing the means of transmission, between or among points specified by the Licensee of information of the Licensee's choosing, without change in the form or content of the information as sent and received.

**SECTION 2. PERMITTED ACTIVITIES**

- a. A nonexclusive license is hereby granted to the Licensee to construct fiber optic cable and to maintain, extend and provide Services related thereto along, across, upon or under any Right-of-way, as the same are shown on the map labeled Exhibit A and attached hereto and incorporated by this reference as if fully set forth, within the City, for the term of and subject to the conditions of this Agreement.

b. The Licensee shall not claim or assert that by virtue of this Agreement that the City has or is obligated to convey legal or equitable title to the Right-of-way; the Agreement does and shall give only the Licensee the right to occupy the Right-of-way, for the purposes and for the period stated in this Agreement.

This agreement does not:

(1) Grant any other rights or right to use any other property, owned or controlled by the City or a third-party, without the consent of such party;

(2) Grant the authority to construct or install fiber optic cable or maintain or operate any Service on City property other than the Right-of-way;

(3) Excuse Licensee from obtaining appropriate agreements before using or attempting to use any property and/or facilities owned or controlled by a third-party.

c. Licensee shall comply with all applicable laws, rules and regulations (including, but not limited to those relating to posting a bond, providing liability insurance, traffic control, restoration of street cuts and the construction and use of the Right-of-way or other public property) as adopted by the City of Grand Junction. Annual fees, as the same are established by resolution of the City Council shall apply.

d. Licensee shall have the right to construct and install fiber optic cable and maintain and operate its Service along, across, upon and under the Right-of-way. Such shall be so constructed and maintained as not to obstruct or hinder the usual travel or public safety or obstruct the legal use by other utilities.

e. Licensee's use of the Right-of-way shall in all matters be subordinate to the City's use or occupation of the Right-of-way. Without limitation of its rights, the City expressly reserves the right to exercise its governmental powers now and hereafter vested or granted in the City. Licensee shall coordinate its work in the Right-of-way in a manner which minimizes adverse impact(s) as reasonably determined by the City. Installation shall be performed in accordance with the City's Engineering Design Standards and Construction Specifications.

f. All sidewalks, paving and other improvements of or in the Right-of-way that are cut, damaged or removed by Licensee in its activities under this Agreement shall be fully repaired or replaced promptly by Licensee without cost to the City to the reasonable satisfaction of the City. The Licensee shall be obligated to repair or replace any trees, flowers, shrubs, landscaping or structures that interfere with Licensee's access to the Right-of-way when the trees, flowers, shrubs, landscaping or structures are located in a utility easement.

g. The City has the authority to inspect the repair or replacement and if necessary, to require Licensee to do additional work. Notice of an unsatisfactory repair or replacement shall be provided by the City to the Licensee in writing and the deficiencies shall be repaired by the Licensee in a reasonable time not to exceed 30 days.

h. The City may order the immediate cessation of any work, which poses a threat in its sole judgment to the life, health, safety or wellbeing of the public.

i. Licensee, at its sole cost and expense, shall prepare and file with the City within 90 days of completion of the work "as-built" drawings, in such form as may be required by the City Engineer, providing the location and sufficient detail of all existing and new Facilities in the Right-of-way, and such other related

information as may be reasonably required by the City Engineer. A scale of no more than 1 inch=50 feet shall be used.

j. Licensee shall be responsible for all costs that directly and indirectly arise out of or under its installation, maintenance, repair, operation, use, and replacement of fiber optic cable and the provision of Services within the Right-of-way. Licensee shall be responsible for the costs incurred to remove or relocate its facilities when required by the City due to City requirements relating to maintenance, change of grade, change of location, and use of the Right-of-way for City purposes, as part of a public project. The City will provide reasonable advance notice to Licensee of any need to remove or relocate its facilities. In the event that facilities must be removed, the City will provide 120 days advance written notice to Licensee and will coordinate with Licensee on the development of a new route, if needed.

k. Licensee may, after consulting in advance with the City and securing its written permission, trim trees upon and overhanging the Right-of-way. Trimming shall be conducted by a City approved arborist.

### **SECTION 3. INDEMNITY AND HOLD HARMLESS**

The Licensee shall indemnify, defend and hold the City and its officers and employees harmless from and against any and all costs, liabilities, losses and expenses (including, but not limited, reasonable attorneys' fees, including legal assistant's fees) resulting from any claim, demand, suit, action, judgement, loss or proceeding brought against the City and its directors, officers and employees for: (a) personal injury including death; (b) the damage to any personal or real property; (c) any unauthorized use of the Facilities of the City; or (d) a violation of any United States intellectual property right including patents, copyrights, trademarks, or service marks all of which must be established under United States law, arising directly or indirectly from the negligence or intentional acts or omissions of the Licensee or its directors, officers, employees, contractors, representatives or agents. The Licensee acknowledges that the City is a governmental entity and under Colorado law is protected by governmental immunity. The City may assert, consistent with Colorado law, that defense to any action arising out of or under this Agreement.

### **SECTION 4. RESERVATION OF RIGHTS**

a. By entering into this Agreement, neither the City's nor Licensee's present or future legal rights, positions, claims, assertions or arguments before any administrative agency, the Public Utilities Commission and/or any court are in any way prejudiced or waived.

b. By entering into this Agreement, neither the City nor Licensee waive any rights, but instead expressly reserve any and all rights, remedies, and arguments the City of Licensee may have at law or equity, without limitation, to argue, assert, and/or take any position as to the legality or appropriateness of any present or future laws, non-franchise ordinances and/or rulings.

### **SECTION 5. FAILURE TO ENFORCE**

The failure of either the City or the Licensee to insist in any one or more instances upon the strict performance of any one or more of the terms or provisions of this Agreement shall not be construed as a waiver or relinquishment for the future of any such term or provision, and the same shall continue in full force and effect. No waiver or relinquishment shall be deemed to have been made by the City or the Licensee unless said waiver or relinquishment is in writing and signed by both the City and the Licensee.



**SECTION 9. ACCEPTANCE OF TERMS**

By and with its signatures the Licensee accepts the provisions, terms and conditions of this Agreement, agrees to be bound by the same and as such the Agreement shall constitute a contract between the City and Licensee subject to the provisions of the laws of the State of Colorado.

**SECTION 10. SEVERABILITY**

If any clause, sentence, or section of this Agreement, or any portion thereof, shall be held to be invalid by a court of competent jurisdiction, such decision shall not affect the validity of the remainder, as a whole or any part thereof, other than the part declared invalid; provided, however, the City or Licensee may elect to declare the entire Agreement invalidated if the portion declared invalid is, in the judgment of the City or Licensee, as essential part of the Agreement.

The AGREEMENT is entered into as of the 8 day of August 2016.

LICENSEE

By: \_\_\_\_\_

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

Jared B. [Signature]  
COO

CITY

By: \_\_\_\_\_

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

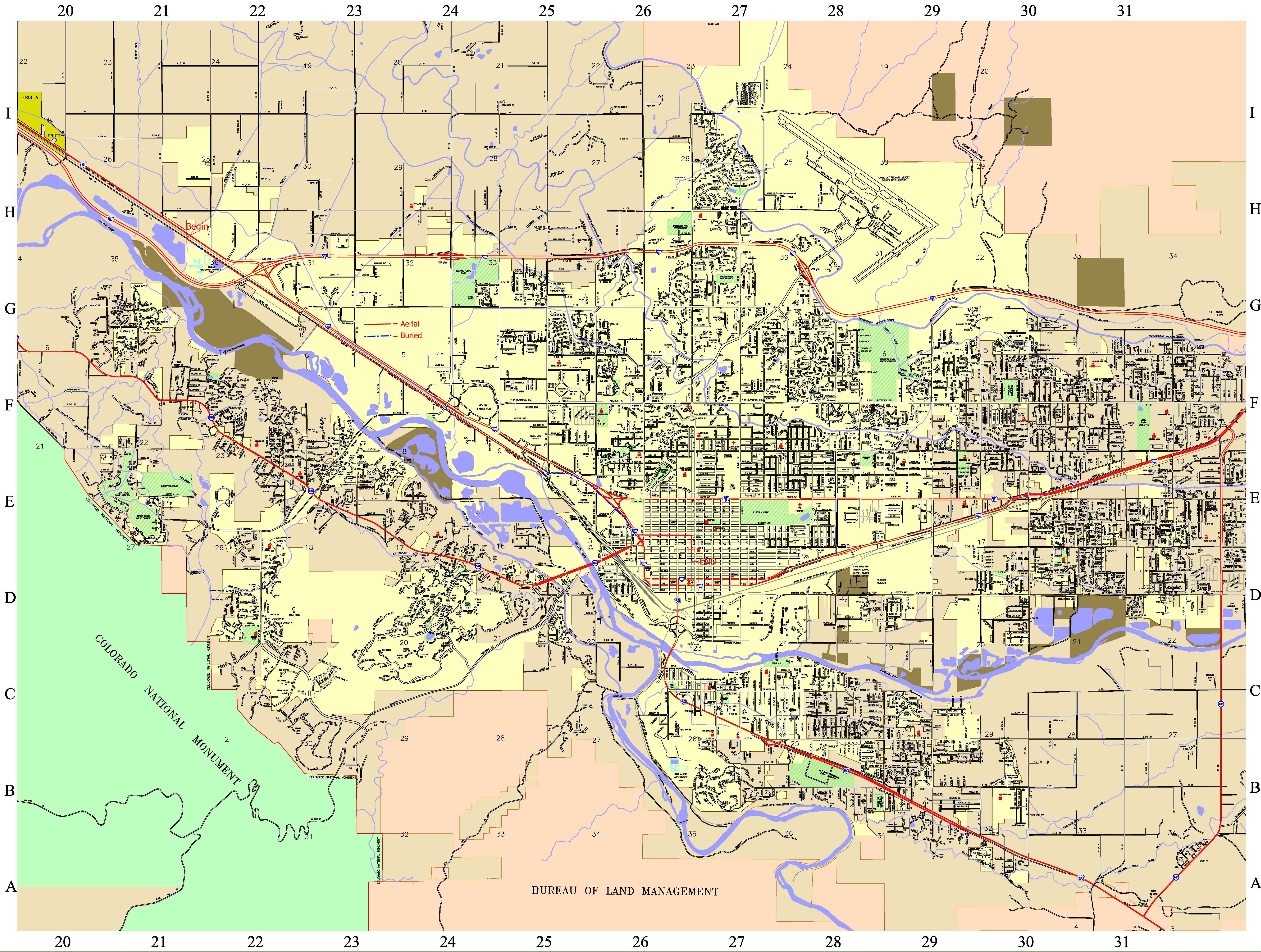
[Signature]  
CITY MANAGER

**NEED MAP OF FIBER  
ALIGNMENT THROUGH  
CITY OF GRAND JUNCTION**

**Exhibit A**



# CITY OF GRAND JUNCTION



LEGEND	IMPROVED ROADWAYS	RAILROADS	GRAND JUNCTION CITY LIMITS	COLORADO NATIONAL MONUMENT LAND	SCHOOLS	0 1000 2000 4000 5280 feet 0 .5 1 mile SCALE: 1"=2000' 10°8'E
	UNIMPROVED ROADWAYS	COLORADO NATIONAL MONUMENT BOUNDARY	UNINCORPORATED AREA	BLM LAND	HOSPITALS	
	PRIVATE ROADS	JOINT PLANNING AREA CITY/COUNTY	FRUITA CITY LIMITS	STATE LAND	POLICE STATION	
	ALLEYS			PARKS LAND	FIRE STATIONS (F.S.#)	

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 THIS MAP WAS DEVELOPED BY THE CITY OF GRAND JUNCTION FOR USE BY THE CITY ONLY. THE CITY DOES NOT GUARANTEE OR PROMISE THAT IT IS ACCURATE FOR VARIOUS TECHNICAL REASONS.  
 FOR INFORMATION PLEASE CONTACT THE CITY OF GRAND JUNCTION INFORMATION TECHNOLOGY DIVISION, GIS TEAM 970.266.4670 www.gjcity.org