

## CONSTRUCTION SERVICES AGREEMENT

This Construction Services Agreement ("Agreement") is entered into as of this 21<sup>ST</sup> day of May, 2008, ("Effective Date") by and between Central Telephone Company d/b/a Embarq ("Embarq"), City Parkway V, Inc., City Parkway IV A, Inc., and Office District Parking I, Inc. City Parkway V, Inc., City Parkway IV A, Inc. and Office District Parking I, Inc. are referred to collectively as "City Parkway". All signatories to this Agreement are referred to collectively as the "Parties" or singly as the "Party".

### RECITALS

WHEREAS, City Parkway is the owner of certain pieces of real property located north of Bonneville Avenue, south and east of Grand Central Parkway and west of the railroad track lines operated by Union Pacific Railroad in Las Vegas, Nevada, commonly known as the Union Park Development and consisting of approximately 61 acres ("Property"). The Property is legally described on Exhibit A attached to this Agreement ("Property Legal Description"); and

WHEREAS, the Property is being master planned and developed by City Parkway through its agent, Newland Communities, LLC. Current planned projects on the Property include a 2,000-seat performing arts center, the "Keep Memory Alive, the Foundation for the Lou Ruvo Brain Institute," the World Jewelry Center (over 50 story building with more than 900,000 square feet), 125,000 square foot shopping promenade, 1.9 million square feet of Class A office space, 363,000 square feet of ground-floor retail space, 3,100 high-rise residential units and a hotel/casino (collectively, "Planned Projects"). The Planned Projects are subject to change from time to time; and

WHEREAS, City Parkway desires to provide telecommunications services to Planned Projects at the Property; and

WHEREAS, Embarq desires to install infrastructure in order to provide telecommunications services to Planned Projects at the Property.

NOW, THEREFORE, for and in consideration of the mutual covenants and conditions set forth herein, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

### ARTICLE 1: SERVICES AND EMBARQ FACILITIES

1.1 **Construction Services.** Embarq will provide solely for City Parkway certain construction services ("Services") for the infrastructure build-out of conduit, manholes and pole lines (collectively, "Embarq Facilities") at the Property, with contractors, subcontractors, employees or agents of Embarq's choosing, and at Embarq's sole cost and expense. Except as otherwise expressly provided for elsewhere in this Agreement, Embarq will furnish all labor, materials, supervision, tools, equipment and each and everything required to perform the Services as specified in and in accordance with the written scope of Services attached to this Agreement as Exhibit B ("Scope of Services"). City Parkway will not subject Embarq to any fine or penalty that might arise due to Embarq using contractors, subcontractors, employees or agents of Embarq's choosing, and will indemnify, defend and hold Embarq harmless from the imposition of any such fine or penalty sought against Embarq. City Parkway's indemnification, duty to defend, and hold harmless obligation under this Section 1.1 will survive the

expiration or termination of this Agreement. Unless expressly set forth in Exhibit B, Embarq's Services will not include the infrastructure build-out of conduit, manholes and pole lines on what is generally deemed to be private property and otherwise the responsibility of individual parcel owners.

1.2 **Schedule.** City Parkway will schedule and coordinate with Embarq the performance of the Services and location of Embarq Facilities. The Parties will utilize all reasonable means to coordinate the construction activities between Embarq and City Parkway or their respective designees. Any disputes that arise from the Parties failure to coordinate the work will be adjudicated per Article 7.3 of this Agreement.

1.3 **Embarq Facilities.** Upon completion of the Services, all Embarq Facilities will be owned exclusively by and will be the exclusive property of Embarq. Accordingly, any use of and access to the Embarq Facilities by City Parkway or third parties will be at Embarq's sole discretion, subject to any requirements of "Applicable Law" (as defined in Section 7.1). Embarq will be allowed and will have access to Embarq Facilities at all times. Embarq may operate, replace and remove Embarq Facilities as Embarq may from time to time require. Embarq will be solely responsible for keeping and maintaining all Embarq Facilities in good condition and repair. The rights granted to Embarq in this Section 1.3 will survive the expiration or termination of this Agreement.

1.4 **Permits and Licenses.** Embarq will obtain and keep current at its own expense all governmental permits, certificates and licenses (including professional licenses, if applicable) necessary for Embarq to perform the Services.

1.5 **Easements.** Embarq will exercise its rights under the 1982 Franchise Agreement with the City of Las Vegas to utilize Public Roads ("Franchise Agreement"), as defined in the Franchise Agreement, to install the Embarq Facilities. In all areas of the Property not covered under the Franchise Agreement, City Parkway will grant Embarq written non-exclusive perpetual easements as Embarq deems reasonably necessary for the purpose of Embarq performing the Services and otherwise constructing, installing, operating, maintaining, replacing and removing Embarq Facilities. Any such easements will be in form and substance acceptable to the Parties, with reasonable ingress and egress throughout the Property for the purpose of Embarq performing the Services and otherwise exercising its rights under any such easements. Any such easements will be prepared by Embarq with City Parkway's cooperation at Embarq's costs and expense, and recorded at Embarq's sole cost and expense, unless otherwise agreed to by the Parties.

1.6 **Developer Coordination.** City Parkway will provide Embarq with contact information for individual parcel developers as soon as practicable after City Parkway City signs a development agreement with individual parcel developers.

## **ARTICLE 2: TERM AND TERMINATION**

2.1 **Term.** The term of this Agreement begins on the Effective Date and expires on the tenth anniversary of the Effective Date.

2.2 **Termination for Convenience.** Embarq may terminate this Agreement at any time without liability by providing 30 days advance notice of termination to City Parkway.

**ARTICLE 3: POINTS OF CONTACT AND NOTICE**

3.1 **Points of Contact and Notice.** The points of contact listed in this Section 3.1 (“Points of Contract”) will serve as the respective Embarq and City Parkway representatives responsible for addressing and handling all operational issues regarding this Agreement. Whenever any notice, consent, approval, request, document, demand, authorization or notice of default is required or permitted under this Agreement (collectively, “Notice”), the Notice must be in writing. All Notice must be delivered in person, or by United States certified mail, return receipt-requested, postage prepaid or by nationally recognized overnight courier service to the Points of Contact at the following addresses:

<b>Points of Contact</b>	
<b>Embarq</b>	<b>City Parkway</b>
Name : Ricky L. Naugle Title: Manager Engineering Address: 330 S. Valley View Blvd. Las Vegas 89107 Telephone Number: (702) 244-8225 E-mail Address: Ricky.L.Naugle@Embarq.com	Name: Doug Selby Title: President, City Parkway V, Inc. Address: 400 Stewart Avenue, 8 <sup>th</sup> Floor Las Vegas, NV 89101 Telephone Number: (702) 229-5363 E-mail Address: DSelby@lasvegasnevada.com

3.2 **Copies of Default Notice.** In addition to sending the required notices and the default Notice to the Points of Contact, copies of all default Notice must be sent to the Parties at the following addresses:

If default Notice to City Parkway:

City Parkway V, Inc. 400 Stewart Avenue Las Vegas, Nevada 89101 Attn: Scott Adams, Vice-President	and	Newland Communities LLC 2300 W. Sahara Ave. STE 750 Las Vegas, Nevada 89102 Attn: Rita Brandin, Senior Vice President
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If default Notice to Embarq:

Central Telephone Company 5454 W. 110 <sup>th</sup> St. Overland Park, KS 66211 Attention: Developers Markets	and	Embarq Law Department 5454 W. 110 <sup>th</sup> St. Mailstop: KSOPKJ 0701 Overland Park, KS 66211 Attn: Developers Markets
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3.3 **Notice Effective Date and Change of Address.** If Notice is given by personal delivery, a receipt indicating that personal delivery was made must be obtained. Notice will be deemed effective on the date of receipt by the addressee as shown on the receipt if given by personal delivery, on the return receipt if Notice is given by certified mail or the confirmation of delivery form if Notice is given by overnight courier service. Rejection or refusal to accept or the inability to deliver because of a changed

address of which no Notice was given will be deemed to be receipt of the Notice as of the date of rejection, refusal or inability to deliver. Either Party may change its address and information in Sections 3.1 or 3.2 by giving Notice of such change to the other Party in the manner for giving Notice prescribed in Section 3.1.

#### **ARTICLE 4: FINAL ACCEPTANCE AND EMBARQ FACILITIES**

4.1 **Notice of Completion.** When Embarq fully completes the Services, Embarq will give City Parkway notice of such completion, specifying the Services completed and the date completed ("Notice of Completion"). Within 30 days after receipt of the Notice of Completion, City Parkway may inspect the Services and either: (a) reject the Notice of Completion and specify defective or uncompleted portions of the Services; or (b) give Embarq notice of final acceptance. Embarq will promptly remedy such defective and uncompleted portions of the Services, and will again give City Parkway Notice of Completion of the Services for acceptance or rejection.

#### **ARTICLE 5: INSURANCE**

5.1 **Types and Amounts.** During the Term, Embarq must obtain and maintain with financially reputable insurers which are licensed to do business in the State of Nevada insurance in the following types and amounts: (a) worker's compensation as provided for under any workers' compensation or similar law in the State of Nevada, with an Employer's Liability limit of not less than \$1,000,000 per accident or disease; (b) commercial general liability insurance, including bodily injury, property damage, personal and advertising injury liability, and contractual liability covering operations, independent contractor and products/completed operations hazards, with limits of not less than \$1,000,000 combined single limit per occurrence and \$2,000,000 annual aggregate; and (c) business auto liability insurance covering the ownership, maintenance or use of any owned, non-owned or hired automobile with a limit of not less than \$1,000,000 combined single limit per accident for bodily injury and property damage liability.

5.2 **Waiver of Subrogation.** The Parties must look first to any insurance in its favor before making any claim against the other Party for recovery resulting from injury to any person or damage to any property arising from any cause, regardless of negligence, and each Party does hereby release and waive to the fullest extent permitted by law, and must cause its respective insurers to waive, all rights of recovery by subrogation against the other Party.

5.3 **Certificate of Insurance and Notice of Cancellation.** Embarq will, upon the request of Developer, deliver to Developer a certificate of insurance evidencing that the insurance Embarq is required to carry under this Agreement is in force and will not be canceled or materially altered without first giving Developer 30 days prior written notice.

#### **ARTICLE 6: INDEMNIFICATION**

6.1 **Embarq Indemnification.** Embarq will indemnify, defend and hold City Parkway, the City of Las Vegas, its officers, employees, agents, guests, invitees and contractors harmless from and against any and all suits, claims, fines, penalties, judgments, expenses and costs (including reasonable attorneys' fees) in connection with the loss of life, bodily injury or damage to property arising from or out of Embarq performing the Services and otherwise exercising the rights granted to it under this Agreement, except to the extent caused by the negligence or intentional misconduct of City Parkway, its officers, employees, agents, guests, invitees and contractors. Embarq's indemnification, duty to defend

and hold harmless obligations under this Section 6.1 will survive the expiration or termination of this Agreement.

## **ARTICLE 7: APPLICABLE LAW AND DISPUTE RESOLUTION**

7.1 **Applicable Law.** This Agreement is governed by and construed in accordance with the law of the State of Nevada without regard to its conflict of laws principles, and is also subject to all other applicable laws, ordinances, requirements, codes, orders, decisions, rules and regulations of applicable federal, state, county, municipal, or other governmental authorities (collectively, "Applicable Law").

7.2 **Forum.** Any court proceeding brought by either Party against the other under this Agreement or otherwise must be brought, as appropriate, in the Eighth Judicial District Court located in Clark County, Nevada or in the United States District Court for the District of Nevada located in Las Vegas, Nevada. Each Party agrees to personal jurisdiction in either court.

7.3 **Waiver of Jury Trial.** Each Party, to the extent permissible by law, knowingly, voluntarily, and intentionally waives its right to a trial by jury in any action or legal proceeding, whether made by claim, counter-claim, third-party claim or otherwise, arising out of or relating to this Agreement or otherwise. This waiver applies to any action or legal proceeding, whether sounding in contract, tort, or otherwise. The waiver contained in this Section 7.3 is binding on the Parties and their successors and assigns, and will survive the expiration or termination of this Agreement.

7.4 **Arbitration.** If for any reason the jury trial waiver set forth in Section 7.3 is held to be unenforceable, the Parties will enter into binding arbitration for any dispute arising out of this Agreement or any claim arising under any federal, state or local statutes, laws or regulations. The Parties will mutually agree upon an arbitrator. Any arbitration will be held in the Las Vegas, Nevada metropolitan area and be subject to the laws of the State of Nevada. Discovery in the arbitration will be governed by the local rules applicable in the United States District Court for the District of Nevada,

## **ARTICLE 8: DEFAULT AND REMEDIES**

8.1 **Default.** A Party's failure to perform any obligation under this Agreement within 15 business days of its receipt of notice of non-performance from the other Party will constitute a default. However, if the default cannot reasonably be cured within such 15 day period, it will not be a default under this Agreement if the defaulting Party commences action to cure the default within such 15 day period, and thereafter proceeds with due diligence to and fully cure the default.

8.2 **Remedies.** In the event of a default, the non-defaulting Party may terminate this Agreement, as well as resort to any other remedies to which it is entitled under this Agreement, at law or in equity. All remedies to which a Party is entitled are cumulative and are not exclusive of other remedies to which a Party may be entitled. Use of one or more remedies does not bar the use of any other remedy.

8.3 **Waiver.** The waiver of a breach of any term or condition of this Agreement will not constitute the waiver of any other breach of the same or any other term. To be enforceable, a waiver must be in writing signed by a duly authorized representative of the waiving Party.

IN WITNESS WHEREOF, the Parties hereto have entered into this Agreement as of the Effective Date.

“Embarq”

Central Telephone Company

By:

Name: Loren V. Sprouse

Title: VP Engineering

“City Parkway”

City Parkway V, Inc.

By:

Douglas A. Selby  
Douglas A. Selby  
President

Attest

Steve Houchens  
Steve Houchens, Secretary

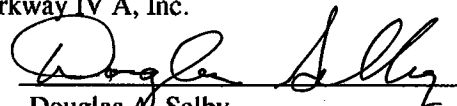
Approved as to Form

John S. Ridilla 5/9/08  
Deputy City Attorney Date


John S. Ridilla  
Deputy City Attorney

City Parkway IV A, Inc.

By:

  
Douglas A. Selby  
President

Attest

  
Steve Houchens, Secretary

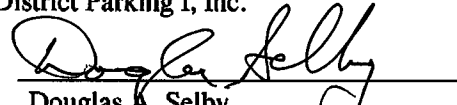
Approved as to Form

 5/9/08  
Deputy City Attorney Date


John S. Ridilla  
Deputy City Attorney

Office District Parking I, Inc.

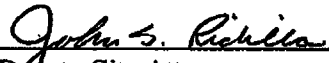
By:

  
Douglas A. Selby  
President

Attest

  
Steve Houchens, Secretary

Approved as to Form

 5/9/08  
Deputy City Attorney Date

John S. Ridilla  
Deputy City Attorney

## **ARTICLE 9: MISCELLANEOUS**

**9.1 Interpretation.** The Parties and their respective counsel have reviewed this Agreement. The normal rules of construction to the effect that any ambiguities are to be resolved against the drafting party will not be employed in the interpretation of this Agreement or in any amendments or exhibits to this Agreement.

**9.2 Assignment.** Neither Party may assign its rights or delegate its obligations under this Agreement in whole or in part without the other Party's prior consent, which consent will not be unreasonably withheld, conditioned or delayed. Notwithstanding the foregoing sentence, Embarq may assign its rights or delegate its obligations under this Agreement in whole or in part without City Parkway's prior consent to: (a) any entity controlling, controlled by or under common control with Embarq; (b) any surviving successor entity or newly created successor entity in the event of a merger, reorganization or consolidation involving Embarq; or (c) the purchaser of all or substantially all of Embarq's assets located in the city of Las Vegas, Nevada.

**9.3 Severability.** If any provision of this Agreement is held to be unenforceable, the remaining provisions will remain in effect and the parties will negotiate in good faith a substantively comparable enforceable provision to replace the unenforceable provision.

**9.4 Successors.** The provisions, covenants and conditions of this Agreement will bind and inure to the benefit of the legal representatives, agents, heirs, successors and permitted assignees of each of the Parties.

**9.5 Force Majeure.** If either Party is delayed from performing an obligation under this Agreement because of strikes, lockouts, labor troubles, the inability to procure materials, power failure, restrictive governmental laws or regulations, riots, insurrection, storms, hurricanes, earthquakes or other natural disasters, war or other reason which is not the fault of or is beyond the reasonable control of the Party delayed, then performance of the obligation will be excused for the period of the delay.

**9.6 No Third Party Beneficiaries.** This Agreement is for the benefit of the Parties and not for any other person or entity. This Agreement does not provide any other person or entity with any remedy, claim, liability, reimbursement or right of action.

**9.7 Disclosure of Principals.** Pursuant to Resolution R-105-99 adopted by the City Council effective October 1, 1999, Embarq warrants that it has disclosed, on the form attached hereto as Exhibit C, all principals, as well as all persons and entities holding more than 1% interest in Embarq or any principal of Embarq. Throughout the term hereof, Embarq will notify City Parkway in writing of any material change in the above disclosure within 15 days of any such change.

**9.8 Entire Agreement.** This Agreement constitutes the Parties' entire agreement and understanding concerning its subject matter and supersedes all prior oral or written agreements, representations, statements, negotiations, understandings, proposals and undertakings with respect to the subject matter of this Agreement. This Agreement consists of the body of this Agreement and the following Exhibits, each of which is attached to and incorporated by reference into this Agreement:

Exhibit A – Property Legal Description  
Exhibit B – Scope of Services  
Exhibit C – Disclosure of Principals

**Exhibit A  
Property Legal Description**



*[Handwritten Signature]*  
3/13/08

MARCH 13, 2008  
UNION PARK  
BY: ARR  
CHK BY: NJA  
(PAGE 1 OF 1)

**EXPLANATION:**

THIS LEGAL DESCRIPTION DESCRIBES A PORTION OF THAT DEVELOPMENT KNOWN AS "UNION PARK" LOCATED NORTH OF BONNEVILLE AVENUE, SOUTH AND EAST OF GRAND CENTRAL PARKWAY AND WEST OF THE UNION PACIFIC RAILROAD FOR EMBARQ AGREEMENT PURPOSES.

**UNION PARK**

**BEING** LOT 5 OF THAT SUBDIVISION KNOWN AS "PARKWAY CENTER" ON FILE IN THE OFFICE OF THE COUNTY RECORDER, CLARK COUNTY NEVADA IN BOOK 53 OF PLATS, AT PAGE 61, LOCATED WITHIN SECTIONS 33 AND 34 OF TOWNSHIP 20 SOUTH, RANGE 61 EAST, M.D.M., CITY OF LAS VEGAS, CLARK COUNTY, NEVADA.

**EXCEPTING THEREFROM** THAT PARCEL CONVEYED TO *KEEP MEMORY ALIVE, A NEVADA NONPROFIT CORPORATION* BY THAT DOCUMENT RECORDED MAY 2<sup>ND</sup>, 2007 IN BOOK 20070502, INSTRUMENT 0004854 CLARK COUNTY, NEVADA OFFICIAL RECORDS.

**FURTHER EXCEPTING THEREFROM** THOSE PARCELS CONVEYED TO THE *CITY OF LAS VEGAS, A MUNICIPAL CORPORATION* FOR RIGHT-OF-WAY PURPOSES BY THAT DOCUMENT RECORDED AUGUST 29<sup>TH</sup>, 2007 IN BOOK 20070829, INSTRUMENT 0002294, CLARK COUNTY, NEVADA OFFICIAL RECORDS.

**END OF DESCRIPTION.**

## **Exhibit B Scope of Services**

To provide service to the Property requires trench and substructure quantities as follows:

There is a total of 12,116 feet of trenching a minimum of 12-inch wide and 42-inch deep to maintain the minimum of 36-inch of cover from the top of the ducts. These are in public right-of-way and on private properties. In many places the trench will be deeper and wider than the minimum because of the number of conduits and to accommodate the manholes with a 48-inch grade ring.

The substructure includes twenty-nine 510-type manholes (4'-6"x8'-6"x6'-6"-inside dimensions), one intercept 510-type manhole (6"x8'-6"x6'-6"-inside dimensions) and one 650-type manhole (5'-0"x10'-6"x7'-0" –inside dimensions). All manholes to have a minimum of 48-inch grade ring attached. Some manholes that will fall in the landscape areas need landscape collars. All conduit to be four inch DB-100 grade PVC ducts including 116, 48-inch, 90-degree rigid galvanized steel (RGS) bends double wrapped with ten mil anti-corrosive PVC tape and a total of 40,204 linear feet. All work to be in conjunction with the most current edition of the Embarq specifications book.

**Exhibit C**  
**Disclosure of Principals**

The principals and partners of Central Telephone Company d/b/a Embarq and all persons and entities holding more than 1% interest in Central Telephone Company d/b/a Embarq or any principal of Central Telephone Company d/b/a Embarq are the following:

<u>FULL NAME</u>	<u>BUSINESS ADDRESS</u>	<u>BUSINESS PHONE</u>
1. _____	_____	_____
2. _____	_____	_____
3. _____	_____	_____
4. _____	_____	_____
5. _____	_____	_____
6. _____	_____	_____
7. _____	_____	_____
8. _____	_____	_____
9. _____	_____	_____
10. _____	_____	_____

I hereby certify under penalty of perjury, that the foregoing list is full and complete.

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

Subscribed and sworn to before me this  
\_\_\_\_ day of \_\_\_\_\_, 2008.

\_\_\_\_\_  
Notary Public