



Dave DeVore
Interim Director

Technology Services

121 Library Court Oregon City, OR 97045

July 27, 2021

Board of County Commissioners
Clackamas County

Members of the Board:

Approval of an Intergovernmental Agreement between
Clackamas Broadband eXchange and City of Hillsboro

Purpose/Outcomes	Clackamas Broadband eXchange (CBX) is looking for approval to enter into an Intergovernmental Agreement (IGA) with the City of Hillsboro for project management of a new \$240,000.00 fiber construction project for the Metro Area Joint CAD Services (MAJCS) and Washington County Consolidated Communications Agency (WCCCA).
Dollar Amount and Fiscal Impact	CBX will provide project management of the project for the City of Hillsboro to install 2 new redundant fiber paths to the new WCCCA building. The City of Hillsboro will reimburse CBX for staff time and expenses up to \$5,000.00.
Funding Source	The funding source for the expense of CBX staff time will be contributed from the CBX budget and then reimbursed by the City of Hillsboro.
Duration	Effective upon signature by the board the IGA will be in effect until the completion of the fiber project. This project is not expected to last longer than 6 months.
Previous Board Action	Board has not previously reviewed a similar IGA.
Strategic Plan Alignment	<ol style="list-style-type: none"> 1. Build a strong infrastructure. 2. Build public trust through good government.
Counsel Review	Andrew Naylor, June 10, 2021
Contact Person	Dave Devore (503)723-4996
Contract No.	N/A

BACKGROUND:

CBX is proposing to provide project management oversight for a new redundant dark fiber connection for the new WCCCA building in Hillsboro. This new dark fiber project will provide necessary infrastructure for emergency services in both Washington County and Clackamas County.

Washington County Consolidated Communications Agency (WCCCA) is one of four 911 centers in the MAJCS (Metro Area Joint CAD System) that shares a regional Computer Aided Dispatch (CAD) system which is the brains for all 911 centers. Clackamas County (C-COM), Lake Oswego Communications (LOCOM) and Columbia 911 (C911) are all partners of this CAD system. It is important that the CAD Network be built on dark fiber that is owned and not commercially shared so that none of these 911 centers lose connectivity to all 4 of the partners involved in this project.

The four 911 centers have sought to ensure the highest levels of redundancy and resilience to provide a stable CAD environment, not only for the 911 partners, but also for all of the police, fire

and Emergency Medical Service (EMS) providers who rely on the life safety information shared by 911 callers within these four jurisdictions.

RECOMMENDATION:

Staff respectfully recommends approval to enter into this Intergovernmental Agreement. Staff further recommends the Board delegate authority to the Technology Services Director to sign agreements necessary in the performance of this agreement.

Sincerely,



Dave DeVore
Interim Director, Technology Services



INTERGOVERNMENTAL AGREEMENT

This Agreement ("Agreement") is made by and between the City of Hillsboro, a municipal corporation of the State of Oregon ("City"), and Clackamas County, Oregon, a political subdivision of the State of Oregon. ("County").

RECITALS

Whereas, the City of Hillsboro and Clackamas County agree that reliable fiber optic cable connectivity to the Washington County Consolidated Communications agency is a benefit to the entire region ;

Whereas, Clackamas County has the expertise to coordinate the installation of fiber optic cable; and

Whereas, the City of Hillsboro is willing to incorporate the new fiber cabling into the City's existing network.

The parties agree as follows:

TERMS AND CONDITIONS

1. **START AND END DATES.**

The **effective date** of this Agreement is the date fully executed by both parties. This Agreement shall continue until June 30, 2022. Agreement may be terminated earlier or term may be extended, as provided in this Agreement.

2. **AGREEMENT DOCUMENTS.**

This Agreement consists of these Terms and Conditions and the documents ("Exhibits") listed below in descending order of precedence. A conflict in these documents shall be resolved in the priority listed below with these Terms and Conditions taking precedence. The Exhibits to this contract are:

- Exhibit A: Fiber Plans;

3. **RESPONSIBILITIES OF THE PARTIES.**

3.1. City of Hillsboro Responsibilities:

- 3.1.1. City will provide an approved design for the installation of fiber (Exhibit A).
- 3.1.2. City will pay County a project management fee not to exceed \$5,000. Fee's to include, but not limited to the procurement process for a construction contractor and any legal fee's.
- 3.1.3. City will participate in a joint procurement process with County for construction of the fiber network. The City will provide the design, pay monthly invoices and have final approval on any change orders. City will provide all City permits required for this project.
- 3.1.4. City will join County in entering into a contract with the contractor that has been awarded the contract under the joint procurement process.

- 3.1.5. City will be responsible for paying approved construction related charges to the selected contractor.
 - 3.1.6. Upon inspection, approval, delivery of asbuilts, and payment to County, the City will assume ownership of the installed infrastructure and responsibility for its maintenance.
 - 3.2. Clackamas County Responsibilities:
 - 3.2.1. County will provide all project management services related to the installation of the infrastructure as shown in Exhibit A. Installation will include a complete solution including any conduits, fiber cable, handholes, splice enclosures, splicing, testing, etc.
 - 3.2.2. County will participate in a joint procurement process with City for construction of the fiber network. County will review all monthly invoices for accuracy, approve any change orders and provide accuracy and quality control of fiber project.
 - 3.2.3. County will join City in entering into a contract with the contractor that has been awarded the contract under the joint procurement process.
 - 3.2.4. County will review invoices submitted by the contractor to ensure they align with work completed, perform all tasks to meet BOLI requirements, and provide detailed asbuilts and fiber test results upon completion of the project.
4. **COMPLIANCE WITH APPLICABLE LAWS.**

Each party shall comply with all applicable federal, state and local laws; and rules and regulations on non-discrimination in employment because of race, color, ancestry, national origin, religion, sex, marital status, age, medical condition or handicap. In addition, each party agrees to comply with all local, state and federal ordinances, statutes, laws and regulations that are applicable to the services provided under this Agreement.
5. **RECITALS.**

The recitals above are incorporated herein as if fully set forth.
6. **INDEPENDENT CONTRACTOR.**

Each party is an independent contractor with regard to each other party and agrees that the performing party has no control over the work or the manner in which it is performed. No party is an agent or employee of any other. Nothing herein is intended, nor shall it be construed, to create between the parties any relationship of principal and agent, partnership, joint venture or any similar relationship, and each party hereby specifically disclaims any such relationship.
7. **TERMINATION.**
 - 7.1. Termination for cause. Either party may terminate this Agreement, in whole or in part, immediately upon notice, or at such later date as may be established in such a notice, to the other party upon the occurrence of the following events: One party commits any material breach or default of any covenant, warranty, obligation, certification or agreement under this Agreement, fails to perform the work or services under this Agreement within the time specified herein or any extension thereof, or so fails to pursue the work or services as to endanger the performance under this Agreement in accordance with its terms.

- 7.2. Either party may terminate this Agreement in the event that party fails to receive expenditure authority sufficient to allow the terminating party, in the exercise of its reasonable administrative discretion, to continue to perform under this Agreement, or if federal or state laws, regulations or guidelines are modified or interpreted in such a way that either the project described in this Agreement is prohibited or the terminating party is prohibited from paying for such work from the planned funding source. Neither party shall enter into any contract arising from the joint procurement described in Section 3, above, without obtaining expenditure authority to do so.
8. **CHANGES.**
Modifications to this Agreement are valid only if made in writing and signed by all parties.
9. **INDEMNIFICATION.**
Subject to the limitations of liability for public bodies set forth in the Oregon Tort Claims Act, ORS 30.260 to 30.300, and the Oregon Constitution, each party agrees to hold harmless, defend, and indemnify each other, including their officers, agents, and employees, against all claims, demands, penalties, actions and suits (including the cost of defense thereof and all attorney fees and costs, through all appeals) arising from the indemnitor's performance of this Agreement where the loss or claim is attributable to the acts or omissions of that party or its officers, employees or agents.
10. **ACTION, SUITS OR CLAIMS.**
Each party shall give the other immediate written notice of any action or suit filed or any claim made against that party that may result in claims or litigation in any way related to this Agreement.
11. **INSURANCE.**
Each party agrees to maintain insurance levels or self-insurance in accordance with ORS 30.282, for the duration of this Agreement at levels necessary to protect against public body liability as specified in ORS 30.269 to 30.274.
12. **NO THIRD PARTY BENEFICIARIES.**
Except as set forth herein, this Agreement is between the parties and creates no third-party beneficiaries. Nothing in this Agreement gives or shall be construed to give or provide any benefit, direct, indirect or otherwise to third parties unless such third parties are expressly described as intended to be beneficiaries of its terms.
13. **REMEDIES, NON-WAIVER.**
The remedies provided under this Agreement shall not be exclusive. The parties shall also be entitled to any other equitable and legal remedies that are available. No waiver, consent, modification or change of terms of this Agreement shall bind the parties unless in writing and signed by all parties. Such waiver, consent, modification or change, if made, shall be effective only in the specific instance and for the specific purpose given. The failure of a party to enforce any provision of this Agreement shall not constitute a waiver by a party of that or any other provision.

14. **OREGON LAW, DISPUTE RESOLUTION AND FORUM.**

This Agreement shall be construed according to the laws of the State of Oregon. The parties shall negotiate in good faith to resolve any dispute arising out of this Agreement. If the parties are unable to resolve any dispute within fourteen (14) calendar days, the parties are free to pursue any legal remedies that may be available. Any litigation between the parties arising under this Agreement or out of work performed under this Agreement shall occur, if in the state courts, in the Washington County Circuit Court, and if in the federal courts, in the United States District Court for the District of Oregon located in Portland, Oregon.

15. **ASSIGNMENT.**

No party shall assign its rights or obligations under this Agreement, in whole or in part, without the prior written approval of the other party or parties.

16. **SEVERABILITY/SURVIVAL OF TERMS.**

If any provision of this Agreement is found to be illegal or unenforceable, this Agreement nevertheless shall remain in full force and effect and the provision shall be stricken. All provisions concerning indemnity survive the termination of this Agreement for any cause.

17. **FORCE MAJEURE.**

In addition to the specific provisions of this Agreement, performance by any Party shall not be in default where delay or default is due to war, insurrection, strikes, walkouts, riots, floods, drought, earthquakes, fires, casualties, acts of God, governmental restrictions imposed or mandated by governmental entities other than the parties, enactment of conflicting state or federal laws or regulations, new or supplementary environmental regulation, litigation or similar bases for excused performance that are not within the reasonable control to the Party to be excused.

18. **INTERPRETATION OF AGREEMENT.**

This Agreement shall not be construed for or against any party by reason of the authorship or alleged authorship of any provision. The Section headings contained in this Agreement are for ease of reference only and shall not be used in construing or interpreting this Agreement.

19. **INTEGRATION.**

This document constitutes the entire agreement between the parties on the subject matter hereof and supersedes all prior or contemporaneous written or oral understandings, representations or communications of every kind on the subject.

20. **OTHER NECESSARY ACTS.**

The Parties shall execute and deliver to each other any and all further instruments and documents as may be reasonably necessary to carry out this Agreement.

21. **NOTICE.**

Except as otherwise expressly provided in this Agreement, any communications between the parties hereto or notices to be given hereunder shall be given in writing by personal delivery or mailing with postage prepaid to Agency or City at the address set forth below. Any communication or notice so addressed and mailed shall be deemed to be given five (5) days after mailing. Any communication or notice by personal delivery shall be deemed to be given when actually delivered.

For the City of Hillsboro

Contract Administrator Name, Title: **Greg Mont, Information Services Director**

Address, City, State and ZIP Code: **150 E Main St., Hillsboro, OR 97123**

Telephone: **503-681-5401**

Email: **greg.mont@hillsboro-oregon.gov**

For the Agency

Contract Administrator Name, Title: **Duke Dexter, Clackamas Broadband eXchange Manager**

Address, City, State and ZIP Code: **121 Library Crt, Oregon City, Oregon 97045**

Telephone: **503-722-6663**

Email: **ddexter@clackamas.us**

22. **COUNTERPARTS.**

This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

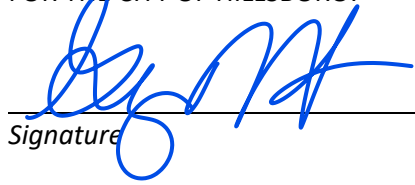
This writing is intended both as the final expression of the Agreement between the parties with respect to the included terms and as a complete and exclusive statement of the terms of the Agreement.

All of the aforementioned is hereby agreed upon by the parties and executed by the duly authorized representatives of the parties signing on the next page.

23. **Debt Limitation.** This Agreement is expressly subject to the limitations of the Oregon Constitution and Oregon Tort Claims Act, and is contingent upon appropriation of funds. Any provisions herein that conflict with the above referenced laws are deemed inoperative to that extent.

24. **No Attorney Fees.** In the event any arbitration, action or proceeding, including any bankruptcy proceeding, is instituted to enforce any term of this Agreement, each party shall be responsible for its own attorneys' fees and expenses.

FOR THE CITY OF HILLSBORO:



Signature

Greg Mont
Name (Printed)

IS Director
Title

7/20/21
Date

FOR CLACKAMAS COUNTY:

Signature

Name (Printed)

Title

Date



Dave DeVore
Interim Director

Technology Services

121 Library Court Oregon City, OR 97045

July 27, 2021

Board of County Commissioners
Clackamas County

Members of the Board:

Approval of an Amendment #4 between
Clackamas Broadband eXchange and the State of Oregon

Purpose/Outcomes	Clackamas Broadband eXchange (CBX) is looking for an amendment with the State of Oregon to add sites for dark fiber services.
Dollar Amount and Fiscal Impact	The monthly recurring cost (MRC) for the 2 new dark fiber laterals will be \$510.00 and the nonrecurring cost (NRC) is \$33,900.00.
Funding Source	The funding source for the expansion of the CBX fiber network will be contributed from the CBX budget and then reimbursed by the State of Oregon.
Duration	Effective upon signature by the board the IGA will be in effect until June 30, 2026.
Previous Board Action	Board has previously approved similar amendments with the State of Oregon for other sites within Clackamas County.
Strategic Plan Alignment	<ol style="list-style-type: none"> 1. Build a strong infrastructure. 2. Build public trust through good government.
Counsel Review	Amendment # 4 was approved by Andrew Naylor May 6, 2021.
Contact Person	Dave Devore (503)723-4996
Contract No.	N/A

BACKGROUND:

CBX currently provides dark fiber connectivity to 11 sites within Clackamas County for the State of Oregon. CBX is looking to provide connectivity to 2 more sites bringing the total to 13. If approved, the 13 sites will receive the benefits of the CBX dark fiber connectivity through June 30, 2026 for current and future communication requirements.

RECOMMENDATION:

Staff respectfully recommends approval to continue providing dark fiber connections to the State of Oregon. Staff further recommends the Board delegate authority to the Technology Services Director to sign agreements necessary in the performance of this agreement.

Sincerely,

Dave DeVore
Interim Director, Technology Services

**AMENDMENT #4 to
INTERGOVERNMENTAL AGREEMENT # 107-55434-14
BETWEEN CLACKAMAS COUNTY AND THE STATE OF OREGON**

This is Amendment No. #4 to Intergovernmental Agreement No. 107-55434-14 (“Agreement”), as amended, executed by and between the State of Oregon, acting by and through the Department of Administrative Services, Procurement Services on behalf of Enterprise Technology Services (“Customer”), and Clackamas County, a political subdivision of the State of Oregon (“County”), on or about November 18, 2013.

In consideration of the mutual promises set forth below and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereby agree to amend the Agreement as follows:

1. Paragraph 5(b) of the Agreement is hereby deleted and replaced in its entirety with the following:

(b) This Agreement is effective upon the date all approvals necessary by law have been obtained and the Agreement is signed by all the parties (“Effective Date”). The Agreement is effective through June 30, 2026, unless amended or terminated. Customer, at its option, may by Amendment renew the Agreement for subsequent years, at the County’s then-current rate schedule, provided, however, that the entire term of the Agreement, including all renewals, will not be more than thirteen (13) years from the Effective Date. Customer shall send County written notice of its intent to renew the Agreement at least thirty (30) days prior to the end of the current term.

2. Appendix A is hereby replaced in its entirety with the Appendix A that is attached in its entirety to this Amendment.

Except as expressly amended above, all other terms and conditions of original Agreement are still in full force and effect.

[Remainder of this page intentionally left blank.]

IN WITNESS WHEREOF, the parties hereto have approved and executed the above Amendment to the Agreement.

Clackamas County

By (signature): _____

Name: _____

Title: _____

Date: _____

**State of Oregon, acting by and through the Department of Administrative Services,
Enterprise Technology Services**

By (signature): Sandy C Wheeler

Name: Sandy C. Wheeler

Title: Director, EIS- Data Center Services

Date: 7/19/2021

**State of Oregon, acting by and through the Department of Administrative Services,
Procurement Services**

By (signature): Lori Nordlien

Name: Lori Nordlien

Title: IT Procurement Strategist

Date: 7/16/2021

Agreement Approved: Oregon Department of Justice – NOT REQUIRED

APPENDIX A

SERVICE AND RATE SCHEDULE

1. **Specified Services and Rates**

The following are the sites, services, and rates agreed to by County and Customer at which Customer shall be provided services on the fiber optic network during the term of the Agreement. It is understood by both parties that service to these sites shall be provided for the rates below, subject to any rate increases otherwise applicable in accordance with terms herein. It is further understood that, during the term of the Agreement, Customer may add services to existing or new locations, or change services and/or locations, but that such changes are subject to the rates for such additional services.

2. **Construction, Installation and Activation**

For construction, installation and activation work and provision of fiber optic network components, the County shall charge Customer nonrecurring charge(s) as specified in Section 5 of Appendix A. All facilities constructed under this Agreement and Appendix A shall be owned, operated, and maintained by the County.

3. **Service Changes and Conversions**

Both parties agree that Customer may add or change services during the term of the Agreement, but that such changes are subject to applicable rates, and upgrade and downgrade charges.

4. **Annual Recurring Charges**

From (Connecting Point A:Site Name & Address)	To (Connecting Point B:Site Name & Address)	Service	Monthly Rate (\$)
1 Clackamas Development Services Building 2051 Kaen Rd Oregon City, OR 97045	Clackamas Education Service District 13455 SE 97th Ave. Clackamas, Oregon 97015	One Pair (two) dark fibers	\$255.00
2 Oregon ME Office 13309 SE 84 th Ave Clackamas, OR 97015	Clackamas Education Service District 13455 SE 97th Ave. Clackamas, Oregon 97015	One Pair (two) dark fibers	\$255.00
3 ODOT Maintenance 325 SW 2 nd Ave Estacada, OR 97023	Clackamas Education Service District 13455 SE 97th Ave. Clackamas, Oregon 97015	One Pair (two) dark fibers	\$255.00
4 ODOT/OSP Government Camp 90300 E Highway 26 Government Camp, OR 97028	Clackamas Education Service District 13455 SE 97th Ave. Clackamas, Oregon 97015	One Pair (two) dark fibers	\$255.00
5 Unemployment Office 506 High St	Clackamas Education Service District	One Pair (two) dark	

	Oregon City, OR 97045	13455 SE 97th Ave. Clackamas, Oregon 97015	fibers	\$255.00
6	Sandy DMV 37395 Highway 26 Sandy, OR 97055	Clackamas Education Service District 13455 SE 97th Ave. Clackamas, Oregon 97015	One Pair (two) dark fibers	\$255.00
7	OLCC Office 9079 SE McLoughlin Blvd Portland, OR 97222	Clackamas Education Service District (South Route) 13455 SE 97th Ave. Clackamas, Oregon 97015	One Pair (two) dark fibers	\$255.00
8	OLCC Warehouse 1777 SE Milport Rd Milwaukie, OR 97222	Clackamas Education Service District 13455 SE 97th Ave. Clackamas, Oregon 97015	One Pair (two) dark fibers	\$255.00
9	OLCC Office 9079 SE McLoughlin Blvd Portland, OR 97222	Clackamas Education Service District (North Route) 13455 SE 97th Ave. Clackamas, Oregon 97015	One Pair (two) dark fibers	\$255.00
10	DEQ 9350 SE Clackamas Rd Clackamas, OR 97015	Clackamas Education Service District 13455 SE 97th Ave. Clackamas, Oregon 97015	One Pair (two) dark fibers	\$255.00
11	ODOT-HWY 26 34250 SE Highway 26 Boring, OR 97009	Clackamas Education Service District 13455 SE 97th Ave. Clackamas, Oregon 97015	One Pair (two) dark fibers	\$255.00
12	ODF 14995 D HWY 211, Molalla, OR 97038 site (US Forestry Building).	Clackamas Education Service District 13455 SE 97th Ave. Clackamas, Oregon 97015	One Pair (two) dark fibers	\$255.00
13	ODOT Estacada District 2C Office 2225 NW Campus Dr Estacada, OR 97023	Clackamas Education Service District 13455 SE 97th Ave. Clackamas, Oregon 97015	One Pair (two) dark fibers	\$255.00

5. Nonrecurring Charges

	From (Connecting Point A:Site Name & Address)	To (Connecting Point B:Site Name & Address)	Service	Amount (\$)
1	ODF 14995 D HWY 211, Molalla, OR 97038 site (US Forestry Building).	Clackamas Education Service District 13455 SE 97th Ave. Clackamas, Oregon 97015	Construction	\$5,000.00
2	ODOT Estacada District 2C Office 2225 NW Campus Dr Estacada, OR 97023	Clackamas Education Service District 13455 SE 97th Ave. Clackamas, Oregon 97015	Construction	\$28,900.00

6. Late Payment Interest

Customer will be charged interest for any payment made after its due date (thirty (30) days after receipt of invoice). Interest is charged at a rate of two-thirds of one percent (2/3 of 1%) per month, or eight percent (8%) annually, on any installment not paid within forty-five (45) days after receipt.

7. Annual Consumer Price Index (CPI) Adjustments

All fees and minimum charges are subject to Consumer Price Index (CPI) adjustments, to be applied annually. The amount of the fees and charges specified herein may increase annually by a percentage up to the change in the West Region (West City Size B/C 2.5 Million or less) Consumer Price Index of the US Dept. of Labor, Bureau of Labor Statistics (<https://www.bls.gov/regions/west/data/xg-tables/ro9xg01.htm>), based upon the rate of change as stated from the last month reported to the same month of the preceding year. In the event such Consumer Price Index (or a successor or substitute index) is not available, a reliable governmental or other nonpartisan publication evaluating the information theretofore used in determining the Consumer Price Index shall be used in lieu of such Consumer Price Index.

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Dave DeVore
Interim Director

Technology Services

121 Library Court Oregon City, OR 97045

August 3, 2021

Board of County Commissioners
Clackamas County

Members of the Board:

Approval of a contract between Clackamas Broadband
eXchange and Denver Gas & Electric Building MMR, LLC

Purpose/Outcomes	Clackamas Broadband eXchange (CBX) is looking for approval to sign a contract to lease a full data cabinet in Denver, CO.
Dollar Amount and Fiscal Impact	The monthly recurring cost (MRC) is \$1,192.50. This cost will be contributed from the CBX budget. No general funds will be used.
Funding Source	The funding source for the expansion of the CBX fiber network will be contributed from the CBX budget.
Duration	Effective upon signature by the board the contract will be in effect for three (3) years.
Previous Board Action	Board has previously approved similar contracts with other internet and communication service providers.
Strategic Plan Alignment	<ol style="list-style-type: none">1. Build a strong infrastructure.2. Build public trust through good government.
Counsel Review	Approved by Andrew Naylor July 26, 2021.
Contact Person	Dave Devore (503)723-4996
Contract No.	N/A

BACKGROUND:

CBX is seeking authorization to lease a data rack at the Denver Gas & Electric Building in Denver Colorado. This is the final infrastructure needed to complete the eastern route for connectivity directly from the CBX fiber network to Denver Colorado. This connection will strengthen the CBX network in case of a seismic event that could render the Portland market inoperable.

RECOMMENDATION:

Staff respectfully recommends approval of the contract with Denver Gas & Electric Building for the data rack. Staff further recommends the Board delegate authority to the Technology Services Interim Director to sign agreements necessary in the performance of this agreement.

Sincerely,

Dave DeVore
Interim Director, Technology Services

DEFINED TERMS

1. Effective Date: Upon signature of both Parties.
2. Licensor: Denver Gas & Electric Building MMR, LLC, a Colorado limited liability company doing business as 910Telecom
3. Licensor's Address: 910 – 15th Street
Suite 1040
Denver, Colorado 80202
Attn: Demetrios Latsis , General Manager
Facsimile Number: (303) 825-2552
Email: Jim@910Telecom.com
4. Licensee: Clackamas County, Oregon doing business as the Clackamas Broadband eXchange
5. Licensee's Address: 121 Library Court
Oregon City, OR 9045
Email Address for Invoices: AP@Clackamas.us
With a copy to: ddexter@clackamas.us
6. Building: Denver Gas & Electric Building, 910-15th Street, Denver, Colorado
7. Landlord: DGEB Management, LLC, a Colorado limited liability company
8. Space: Suite 730, as shown on Exhibit A attached and made a part of this Agreement
9. Lease: Lease for Telecommunications Services Provider dated November 1, 2007, as amended, for the Space between Licensor and Landlord
10. Cabinet: RR numbered 701.15 (42 RUS) in the Space
11. Fees: Those payments for all fees including License Fees, Connection Fees, Installation Fees, Power Fees and Other Fees, set forth in Section 3 of this Agreement and on Exhibit B attached and made a part hereof
12. Licensor Rules: Those set forth on Exhibit C attached and made a part of this Agreement.
13. Term: Three (3) years, commencing on the Effective Date.

This License Agreement (“**Agreement**”) shall consist of the foregoing Defined Terms, and the provisions of the Standard Provisions (consisting of Articles 1 through 17 which follow) and Exhibit’s A through E, inclusive, all of which are incorporated herein by this reference as of the Effective Date. Any conflict between the provisions of the Defined Terms, the provisions of the Standard Provisions and/or the Licensor Rules (regardless of when promulgated or revised), shall be resolved in the following order of priority, (a) the Defined Terms shall control over the Standard Provisions and the Licensor Rules; and (b) the Standard Provisions shall control over the Licensor Rules. Any initially capitalized terms used herein and not otherwise defined shall have the meanings set forth in the Standard Provisions. Licensor and Licensee may be referred to collectively as the “**Parties**” or individually as each “**Party**”.

Licensor grants a license to Licensee and Licensee accepts such license on the terms and conditions set forth in this Agreement with the defined terms having the meanings set forth in this Agreement.

LICENSOR:
Denver Gas & Electric Building MMR, LLC
a Colorado limited liability company

By: _____
Jim Latsis, General Manager

LICENSEE:

a _____

By: _____
Printed Name: _____
Title: _____

STANDARD PROVISIONS

1. **Grant of License and Terms and Conditions.**

1.1. **Licensor's Interest.** Licensor leases the Space in the Building pursuant to the Lease. Licensor has been granted the exclusive right to operate meet-me-room facilities for the building and otherwise manage connectivity among tenants of the building. The Building Meet-Me-Room means areas in the building operated by Licensor for the purpose of allowing Building tenants, tenant customers, subtenants and licensees to physically connect to one another and exchange data and voice connections. It is the intent of Licensor and Licensee that all cross-connections are to be made in the Building Meet-Me-Room.

1.2. **Grant of License.** Licensee shall have the following rights (the "**License**") for the Term, subject to the Lease and on the conditions set forth in this Agreement:

- (a) the exclusive right to use the Cabinet to install, operate, maintain, repair and replace ("**Operate**" or "**Operating**" or "**Operations**") Licensee-owned fiber panels and equipment ("**Equipment**"); and
- (b) the non-exclusive right to access the Cabinet, in the manner described in Section 1.3 of this Agreement, and to exercise such other rights as may be granted herein.

1.3. **Access.**

(a) Licensee shall have access (through its authorized employees) to the Space and the Cabinet 24 hours a day, 365 days a year, subject to reasonable security measures imposed by Landlord or Licensor for the protection of the building and its occupants. Licensee must obtain the prior approval of Licensor for access by any contractor.

(b) Licensee may enter only those Building common areas (including common areas within the Space) necessary for access to the Cabinet and any other portion of the Space licensed to third parties that have given Licensee permission to access their areas.

(c) All persons authorized by Licensee to access the Cabinet shall follow all Licensor Rules.

(d) Licensee shall have no access to other portions of the Building unless Licensee has first completed the Access and Plans for Work Request Form attached hereto as Exhibit D, delivered same to Licensor, obtained Licensor's approval of such access, and paid any costs incurred by Licensor in providing such access.

(e) Licensee shall not have any right to place antennas outside the Cabinet without Licensor's prior written consent, which consent may be withheld, conditioned or delayed in Licensor's sole discretion.

(f) Licensor and its agents, employees, representatives and contractors may enter the Space for any reason, including for maintenance of the Space, for the purpose of inspecting and making necessary repairs, additions (including conduits, conduit risers, ducts, pipes (vertical or horizontal)) or other installations or improvements or replacements to the Cabinet as required by this Agreement or as the Licensor elects to undertake, and to verify that Licensee's operations and Equipment comply with the terms of this Agreement, at any time and from time to time, without prior notice to Licensee and without Licensee's consent.

(g) Licensor reserves the right to suspend access to the Cabinet temporarily due to accident, repairs, maintenance, alternations or improvements or Force Majeure events, as defined in Section 14.4. In addition, Licensee acknowledges that Landlord's or Licensor's performance of routine or emergency repairs and maintenance on, and replacement of equipment or other property located in and around the Building, including the DC Power Plant, that is integral to a telecommunication facility, may interrupt the Operations temporarily. Licensor agrees to use reasonable efforts to minimize such interruptions and shall, except in the case of an emergency, accident, or Force Majeure event as determined by Licensor in its sole discretion, provide not less than five days prior notice by electronic mail of such interruption.

(h) No windows shall be opened in any part of the Building without the prior written permission of the Licensor or Landlord.

(i) Fire escapes, fire doors and landings shall not be used by Licensee except in case of an emergency.

1.4. **Equipment and Use of Cabinet.**

(a) Licensee shall use the Cabinet in compliance with this Agreement solely for Operating the Equipment and interconnecting to third parties and for no other purpose.

(b) Licensee has inspected the Cabinet and the Space and satisfied itself concerning their condition and suitability for Licensee's contemplated uses. Licensor does not warrant or represent that the Cabinet or any part or all of the Space is

suitable for Licensee's business operations. Licensee accepts the Cabinet and the Space "AS IS" and agrees that Licensor has no obligation to perform any Work (as herein defined) or improvements or provide any labor or materials to prepare, modify or alter the Cabinet or the Space for Licensee. Licensor disclaims all express and implied warranties relating to the Building, the Space and the Cabinet and the provision of power (as described in Section 3.3) and any other services, including warranties of merchantability or fitness for particular purpose. Licensee's Equipment is in the Cabinet at the sole risk of Licensee.

(c) Licensee shall not maintain or store any boxes or other containers in the Cabinet. If any boxes or other containers are located in the Cabinet, Licensor may enter the Cabinet upon oral notice to Licensee and open and inspect the contents thereof without any representative of Licensee being present and all without any obligation or liability to Licensee.

(d) Licensee shall not bring into the Building or install in the Cabinet any objects (including Equipment) whose weight, individually or combined, would exceed 120 pounds per square foot of the Cabinet. Licensee agrees to use commercially reasonable efforts to ensure that the Equipment and its operations will not interfere in any way with use of the Building by other Building occupants (including Licensor, other licensees and tenants of the Building).

(e) Any delivery, installation, replacement or removal of Equipment that constitutes a fixture in the Cabinet is subject to review and prior approval by Licensor of the plans and specifications therefor and Licensee shall strictly adhere to all requirements imposed, from time to time, by Licensor in Licensor's sole discretion.

(f) Licensee shall comply with (i) all laws, ordinances, orders, rules and regulations of state, federal, municipal or other agencies or bodies having jurisdiction relating to its specific use or manner of use of the Cabinet, (ii) all industry standards, practices and procedures; and (iii) the Licensor Rules. Licensor may, from time to time and upon thirty (30) days' written notice to Licensee, amend the Licensor Rules by providing a revised Exhibit C to Licensee. Licensee may either (1) accept the amended Licensor Rules or (2) terminate this Agreement. Licensor intends to enforce the provisions of this Agreement and any Licensor Rules uniformly against all licensees but non-uniform enforcement of this Agreement or of any Licensor Rules shall not excuse any breach by Licensee. Licensee shall cause its employees, contractors, representatives, agents, customers and invitees to comply with the Licensor Rules.

(g) Licensee shall not disrupt, adversely affect or interfere with tenants or other licensees in the Building or the Space or with the use and enjoyment of any leased or licensed premises or Building common areas by any occupant of the Building, including by allowing any noise, smoke or odor to escape from the Cabinet, or any noise in excess of local zoning requirements or industry standards.

(h) When using the Cabinet or operating its Equipment, Licensee shall not cause electromagnetic interference ("**EM Interference**"). EM Interference includes interfering in any way with the ability of another occupant of the Building to:

- (i) send or receive EM transmissions (e.g., radio, television, telephone, microwave, short-wave, long-wave or other electromagnetic signals of any sort);
- (ii) operate communications devices (e.g., electronic equipment, computers, telephones, pagers, radios or televisions); or
- (iii) operate EM transmitters (e.g., antennae, amplifiers or satellite dishes).

(i) Licensor shall notify Licensee when Licensor suspects that Licensee's Operations or any Licensee's Equipment is causing EM Interference. Within 24 hours after that notice, Licensee shall eliminate such EM Interference to Licensor's reasonable satisfaction. If the EM Interference continues beyond that 24-hour period then Licensee shall disconnect and shut down its Equipment until the EM Interference ceases and if Licensee fails to do so, Licensor shall have the right to disconnect power to Licensee's Equipment. After performing maintenance, repair, modification, replacement, or other corrective action, Licensee may operate its Equipment only intermittently solely to test whether the corrective action eliminated the EM Interference. After elimination of the EM Interference, Licensee may re-connect and resume operation of its Equipment; Licensor will restore power to any disconnected Equipment as soon as practicable after the EM Interference ceases.

(j) If Licensee or any Equipment presents an immediate hazard to any part or system of the Building, or if Licensee otherwise violates this Agreement and fails to cure such violation after notice as provided in Section 5 below, then Licensor may notify Licensee to cease Operating the Equipment and Licensor shall have the right to disconnect power to the Equipment if Licensee fails to comply within 24 hours after Licensor's notice. Licensee may resume Operating the Equipment once it can be Operated without such hazard or after Licensee's default has been cured, as the case may be.

(k) Licensee shall not use the Cabinet in any way so as to increase premiums for insurance carried by Landlord or Licensor.

(l) Licensor has the right to lease, license and use other portions of the Space. Other occupants will operate their

own equipment and engage in other, perhaps competing, activities to those conducted by Licensee. Licensor may construct, modify, repair or alter portions of the Space or the Building (but not the Licensed Space).

(m) Licensor will use reasonable efforts to minimize moving, relocating or replacing Licensee's Equipment within the Space, provided, however, Licensor shall have the right to relocate, temporarily or permanently, the Cabinet to other premises within the Building ("**Relocation Area**") upon ninety (90) days' advance written notice to Licensee (the "**Relocation**"). The Relocation Area shall be Comparable to the Cabinet, as follows:

- (i) Licensor shall designate the Relocation Area after consulting Licensee.
- (ii) "**Comparable**" means that the Relocation Area has sufficient area, Utility capacity, design and network connectivity so that Licensee may provide its services in a manner similar to how it provided its services in the Cabinet, without additional material cost to Licensee.
- (iii) Licensee shall inspect the Relocation Area and may request reasonable modifications to the Relocation Area.
- (iv) Licensee shall have the sole responsibility to notify any persons with whom Licensee has a business relationship, including customers, vendors, and interconnecting carriers ("**Licensee Associates**") affected by the Relocation.
- (v) With Licensee's approval, Licensor shall arrange for moving the Equipment from the Cabinet to the Relocation Area. Licensor shall attempt to minimize any downtime for Licensee's Operations and Equipment.
- (vi) Licensor shall allow Licensee to perform a standard cutover procedure, if required by the Relocation, to ensure that the relocated Equipment is operational for service prior to discontinuing service from the Cabinet.

Prior to the relocation, Licensee may either (1) agree to the relocation or (2) terminate this Agreement. If Licensee agrees with the relocation, Licensor shall pay the expenses for making the Relocation Area Comparable to the Cabinet; moving the Equipment to the Relocation Area; temporary power required in connection with the cutover procedure; and reconnection fees associated with the cutover procedure. Licensor shall have no other liability resulting from the Relocation, including for lost revenue or other consequences from Licensee's Equipment downtime, for any liabilities of Licensee to Licensee Associates or for any injury to Licensee Associates.

2. **Construction and Improvements.** Licensee shall have the right to place its Equipment in the Cabinet but shall have no right to construct any improvements therein, nor is Licensor obligated to construct any improvements to the Cabinet, Licensee having inspected the same and accepted it in its as-is condition.

3. **Fees.**

3.1. Licensee may pay, from available and authorized funds, an amount not to exceed one hundred and ten thousand dollars (\$110,000.00) over the Term of this Agreement for the Fees for reoccurring and non-reoccurring costs described in Exhibit B. The not to exceed amount reflects the maximum Licensor could be paid based upon funds available under this Agreement. However, the amounts due to Licensor for the Fees described in this Section 3 are on either an as-needed basis, such as installation fees described in Section 3.2, or are monthly costs subject to change. Because the actual amount of Fees is not immediately ascertainable over the entire Term of this Agreement, Licensee does not promise or guarantee Licensor will be paid the full not-to-exceed amount described above. Any Fees that may due under this Agreement in excess of the not to exceed amount set forth herein are contingent upon future appropriation of funds in Licensee's budgets, as determined by Licensee in its sole administrative discretion,

3.2. **Installation Fees.** Licensee shall pay Licensor all costs related to the installation of any item (the "**Installation Fees**") as set forth on Exhibit B or in a proposal for Work. Installation Fees shall be paid by Licensee to Licensor upon execution of this Agreement or, for items installed subsequent to the initial Work, in advance of any installation Work to be performed.

3.3. **License Fees, Connection Fees and Other Fees.** Licensee shall pay Licensor the following:

(a) License Fees shall be paid monthly in advance on or before the tenth day of the month, without notice, demand or setoff. All Connection Fees and Other Fees as shown on Exhibit B are due within 30 days after Licensor notifies Licensee regarding payment of same. Invoices for Connection Fees and Other Fees shall be sent to Licensee at the address set forth in this Agreement or to such other place as Landlord may from time to time designate in writing to Tenant). Landlord agrees that Tenant may also pay Fees by Electronic Funds Transfer (EFT) or ACH to the bank account designated, from time

to time, by Landlord.

(b) By delivering a revised Exhibit B to Licensee at least sixty (60) days before the modification becomes effective, Licensor may modify Connection Fees, Power Fees and/or Other Fees to reflect: (i) additional services requested by Licensee under this Agreement; (ii) increases in Connection Fees and Other Fees as may be set forth in Exhibit B; or (iii) changes in Other Fees and/or Power Fees due to charges by third parties, including power, sales or use taxes, and labor rates.

(c) In addition to License Fees due and payable pursuant to this Agreement, Licensee shall pay recurring charges for cross-connect services ordered by Licensee, if any, through other meet-me-points or meet-me-rooms located within the Building.

(d) License Fees may only be increased once annually, and any such increase may not exceed three percent (3%) over the preceding year effective as of January 1 of each year during the Term. Licensor shall not be required to deliver a revised Exhibit B as described in Section 3.2(b) above for such annual increase.

3.3. Power Fees.

(a) Licensee shall pay for all electricity (the “*Utilities*”) consumed within the Cabinet at the rates specified in Exhibit B, as the same may be adjusted or modified from time to time. Power Fees are due within 30 days after Licensor notifies Licensee regarding payment of same. Invoices for Power Fees shall be sent to Licensee at the address set forth in this Agreement.

(b) Licensor shall make the following available for Licensee’s use in the Cabinet at Licensee’s sole cost and expense: (i) AC Power not exceeding 30 amperes @ 208 volts located within the Cabinet / DC Power not exceeding 100 amperes -48 VDC located within the Cabinet; and (ii) HVAC sufficient to maintain an ambient temperature of 72°F to 82°F and relative non-condensing humidity; however, Licensor shall not be required to provide more than the maximum cooling capacity of 6.5 kilowatts per cabinet/rack (for purposes of this Agreement, the footprint of each cabinet/rack is determined to be 20 square feet) or cooling capacities exceeding the existing system capacity, whichever is less. Any maximum amounts of power specified in this Section are the maximums allowed in the Cabinet. Licensee shall solely be responsible for the cost and expense of power to the Cabinet pursuant to the rates specified in Exhibit B.

(c) If Licensee requires Utilities or power unavailable at the Space or Cabinet, or more utilities or power than are available at the Space or Cabinet, then Licensee shall: (i) arrange to obtain such Utilities and power; (ii) comply with Article 2 in regard to any required Work; and (iii) pay all costs for such Utilities and power, including without limitation, costs of installation, equipment, Work, Infrastructure Work, additional electrical power generation capacity, recurring costs, maintenance costs and removal costs. If feasible, Licensor will assist Licensee to make such arrangements and if Licensor does so, Licensee must either, at Licensor’s request, pay such costs in advance or reimburse to Licensor all expenses that Licensor incurs in connection therewith including Licensor’s direct and indirect costs for man-hour time devoted to assisting Licensee in making such arrangements.

(d) Licensor furnishes all Utilities “**AS-IS**” and does not warrant that any Utilities will be free from shortages, failures, variations or interruptions. Failures, shortages, variations or interruptions of power shall neither constitute an eviction nor disturbance of Licensee’s use of the Cabinet, render Licensor liable to Licensee for abatement of any License Fees, nor excuse performance of Licensee’s obligations hereunder, nor shall Licensor be liable to any Licensee Parties (as defined in Section 8.1) for any such failures, shortages, variations or interruptions of power. If Utilities are interrupted and such interruption results in the simultaneous loss of the transmission of power at both the A and B sides of the Cabinet for a period in excess of eight (8) hours, this Agreement may be terminated upon written notice by either Party to the other given at any time before the restoration of such Utilities.

3.4. **Form of Payments.** All payments by Licensee shall be in US dollars and Licensee shall pay all fees associated with the transfer or collection of funds.

3.5. **Late Payments.** Any payment due hereunder that remains unpaid ten (10) days after its due date shall be subject to a late charge equal to 5% of the payment amount plus interest on the overdue amount at the annual rate of 18% per annum from the due date. Licensee agrees that such late charge and interest are not a penalty but a reasonable estimate of Licensor’s damages resulting from overdue payments. Licensor’s acceptance of any late charge or interest are in addition to and shall not be construed as waiving any other rights of Licensor with respect to Licensee’s default.

4. Term.

4.1. **Expiration.** The License shall terminate upon expiration of the Term without notice being required from either Party, subject to earlier suspension, revocation or termination as provided herein and subject in all events to the terms and provisions of Licensor’s Lease for the Space. This Agreement may also be terminated by Licensee for the following reasons:

(a) By Licensee for convenience upon thirty (30) days' written notice to the Licensor.

(b) If federal or state laws, rules, regulations, or guidelines are modified, changed, or interpreted in such a way that either the work under this Agreement is prohibited, or Licensor is prohibited from paying for such work from the planned funding source; or

(c) If sufficient funds are not provided in future approved budgets of Licensee (or from applicable federal, state, or other sources) to permit Licensee, in the exercise of its reasonable administrative discretion, to continue this Agreement, or if the program for which this Agreement was executed is abolished.

4.2. **Removal of Equipment/Restoration of Cabinet.** Within thirty (30) days' following expiration or termination of the License, at Licensee's sole cost and expense, Licensee shall (i) under the supervision and monitoring of Licensor, disconnect and remove all Licensee's Equipment and any personal property installed or placed by or for Licensee in the Cabinet and the Space that does not constitute a fixture; (ii) repair those portions of the Cabinet and the Building damaged by such removal and restore the Cabinet and Building to the same condition that existed on the Effective Date, ordinary wear and tear excepted; and (iii) surrender possession of the Cabinet in broom-clean condition. No Fees will be charged during the thirty (30) day removal period provided herein.

4.3. **Licensee's Failure to Vacate Cabinet.** If Licensee fails to vacate the Cabinet upon expiration or termination of the Term, as provided in Section 4.2 and subject to the thirty (30) day removal period provided therein, then:

(a) Licensor may disconnect all Licensee's Equipment and exercise peaceful self-help, commence legal proceedings to recover possession of the Cabinet, or use any other lawful means to remove Licensee and Licensee's Equipment and other personal property.

(b) Any of Licensee's Equipment and other personal property that is not removed following thirty (30) days after expiration of the Term shall be deemed abandoned and become the property of Licensor and Licensor shall be entitled to the proceeds of any sale by Licensor of abandoned items.

(c) Licensee shall be liable for all damages, including consequential damages, and costs sustained by Licensor resulting from Licensee's failure to vacate the Cabinet timely or otherwise to comply with this Article 4. Licensee shall also pay Licensor a "**holdover fee**" for each day that Licensee occupies the Cabinet after the thirty (30) day removal period provided in Section 4.2, above. The daily holdover fee shall be 125% of the monthly License Fees in effect at expiration or termination.

(d) This Article 4 shall not be construed to permit Licensee to hold over or to extend the Term. Until it vacates the Cabinet, Licensee shall comply with all provisions of this Agreement and the provisions of this Article 4 shall survive the expiration or termination of this Agreement.

5. **Licensee Breach of Agreement; Revocation or Suspension of License.**

5.1. **Event of Default.** A Party shall be in default if:

(a) any payment due from Licensee to Licensor on account of any amounts due under this Agreement, including late fees and any other charges, is not received by Licensor when due and Licensee has failed to cure such breach within ten (10) days after notice from Licensor of such breach.

(b) Licensee voluntarily or involuntarily files bankruptcy or makes a general assignment for the benefit of creditors.

(c) Licensee fails to remove its Equipment and other personal property and vacate the Cabinet within the time provided under Section 4.2, above.

(d) A Party is otherwise in breach of this Agreement and such violation continues unremedied for fifteen (15) days after notice of such breach is given by the non-defaulting Party.

5.2. **Remedies.**

(a) If Licensee is in default, Licensor shall have the right (without limitation of any other remedies hereunder or under applicable law or in equity) in its sole discretion, to (1) prevent or restrict Licensee's access to the Cabinet; (2) remove any Licensee's Equipment and other personal property from the Cabinet; (3) terminate or suspend any services furnished under this Agreement; (4) terminate, revoke or suspend (in whole or in part), at the sole election of Licensor, the License granted hereby upon written notice to Licensee; (5) without terminating the License, recover possession of the Cabinet through peaceful self-help, legal proceedings or any other lawful means; (6) disable Utilities to the Cabinet and Licensee's Equipment; (7) recover all damages and losses sustained as a result of Licensee's default including unpaid License Fees, the

costs of restoring the Cabinet and the Building to the condition as specified in this Agreement, and disconnect charges; or (8) exercise any rights and remedies available under applicable law, in equity or by statute. If Licensor is in default, Licensee shall have any and all rights and remedies available under applicable law, in equity or by statute.

(b) Except in the event Licensee terminates this License pursuant to Section 4.1 above, Licensee shall not be relieved from its obligation to pay the License Fees by reason of a surrender of possession, Licensor's exercise of its remedies, or otherwise unless specifically agreed to in writing by Licensor, and no taking of possession of the Cabinet by Licensor or other action on the part of Licensor shall be construed to terminate this Agreement unless a written notice of such termination is given to Licensee. If Licensee terminates this License pursuant to Section 4.1 above, Licensee will only be responsible for the Fees due and owing as of the date of termination.

(c) The remedies specified in this Section are cumulative and Licensor may exercise any or all of such remedies. All payment obligations of Licensee accruing prior to termination of this Agreement shall survive such termination.

6. **Eminent Domain.** In the event of a taking by eminent domain of any portion of the Building, or conveyance in lieu thereof (either a "**Taking**"), if such Taking results in a termination of the Lease, or is such that Licensee's Operations in the Cabinet are no longer feasible and Licensor does not exercise its Relocation right under Section 1.4(m) within 60 days after receipt of notice from Licensee that its Operations are no longer feasible, then the License shall terminate as of the date of the Taking and Fees shall be paid by Licensee to such date. Licensee shall have no claim against Licensor for the value of the unexpired Term of this Agreement or to any portion of a condemnation damages award payable to Licensor or Landlord.

7. **Damage to Cabinet.** If any part of the Building is damaged, including by fire or other casualty, disrepair or defects, such that Licensee's Operations in the Cabinet are no longer feasible ("**Damage**"), Licensee shall give notice to Licensor of such damage ("**Licensee's Notice**"). Within sixty (60) days after receipt of such notice, Licensor may elect by notice to Licensee (a) to remedy the Damage so that Licensee may resume its Operations in the Cabinet; (b) relocate Licensee pursuant to Section 1.4(m) in which case the Relocation Area shall become the Cabinet; or (c) terminate the License and this Agreement. If Licensor fails to give notice of its election within such time period, then at any time prior to Licensor giving such notice Licensee may terminate the License upon notice to Licensor effective as of the date of Licensee's Notice, which shall be the sole remedy available to Licensee. After notifying Licensor of the Damage, Licensee shall not be required to pay the License Fees until the Damage is remedied or Licensee is relocated, provided, however, the License Fees shall not abate or be suspended and the Licensee shall not be entitled to terminate this Agreement on account of such damage if such damage is caused by the negligence or willful or reckless act or omission of Licensee, its employees, agents, contractors, invitees or customers.

8. **Limitation of Liability.**

8.1. In no event shall Licensor, its members, managers, officers, employees, affiliates, subcontractors, consultants, representatives or agents ("**Licensor Parties**") be liable to Licensee or to any of its members, partners, shareholders, trustees, beneficiaries, directors, officers, managers, employees, affiliates, clients, invitees, subcontractors, consultants, representatives or agents ("**Licensee Parties**") for any action, claim, loss, damage, demand, liability, penalty, fine, lien, obligation, cost, expense (including attorneys' fees and court costs and costs of other dispute resolution proceedings), lost profits or lost revenue, damages for which Licensee may be liable to Licensee Associates, business interruption or other special damages, incidental damages, exemplary damages, punitive damages, consequential damages, or other damages of any nature, whether foreseeable or not and regardless of whether Licensor was advised of the possibility of such damages (collectively referred to as a "**Loss**") to any person or property arising out of or in connection with or related to: (a) Force Majeure (as defined in Section 14.4); (b) the licensing of any space within the Space or the leasing by Landlord of space in the Building to whomever or for whatever use may be allowed by Licensor or Landlord; (c) interruption, variation, or failure of utility services or power; (d) repairs, maintenance or alterations of any part of the Space, the Cabinet or the Building that are not completed within a commercially reasonable time period; or (i) Licensor's operation, use, management, licensing, maintenance, repair, renovation, alteration or any other activities or omissions relating to the Space, the Cabinet, the Building or this Agreement except to the extent any Loss is caused by or results from the negligence or willful misconduct of Licensor.

8.2. **NOTWITHSTANDING ANYTHING TO THE CONTRARY PROVIDED IN THIS AGREEMENT, IT IS SPECIFICALLY UNDERSTOOD AND AGREED, SUCH AGREEMENT BEING A PRIMARY CONSIDERATION FOR THE EXECUTION OF THIS AGREEMENT BY LICENSOR, THAT IF LICENSEE RECOVERS A MONEY JUDGMENT AGAINST LICENSOR, SUCH JUDGMENT SHALL BE SATISFIED ONLY OUT OF LICENSOR'S ASSETS AS THE SAME MAY THEN BE ENCUMBERED, AND NEITHER LICENSOR NOR ANY LICENSOR PARTIES SHALL BE LIABLE FOR ANY DEFICIENCY.**

8.3. Under no circumstances shall any present or future officer, manager or member of Licensor be liable for the performance of Licensor's obligations under this Agreement. The limitations of liability contained in this Article 8 shall apply

equally and inure to the benefit of Licensor's present and future Licensor Parties and their successors and assigns.

8.4. **EXCEPT AS SPECIFICALLY PROVIDED IN THIS AGREEMENT, NEITHER PARTY SHALL BE ENTITLED TO, AND EACH OF LICENSOR AND LICENSEE HEREBY WAIVES ANY AND ALL RIGHTS TO RECOVER, CONSEQUENTIAL, INCIDENTAL, INDIRECT AND PUNITIVE OR EXEMPLARY DAMAGES, HOWEVER ARISING, WHETHER IN CONTRACT, IN TORT, OR OTHERWISE, UNDER OR WITH RESPECT TO ANY ACTION TAKEN IN CONNECTION WITH THIS AGREEMENT (BUT THIS SHALL NOT LIMIT THE INDEMNITIES OF THE PARTIES CONTAINED IN THIS AGREEMENT WITH RESPECT TO THIRD PARTY CLAIMS).**

9. **Liability Limitations.**

9.1. **Risk of Loss.** Provided Licensor maintains commercially reasonable security measures with respect to access to the Building, Licensee assumes full risk of loss or damage to Licensee's Equipment and any personal property and equipment owned by third parties and placed in the Building by or at the direction of Licensee, whether located in the Cabinet or elsewhere in the Building. Licensor shall have no responsibility whatsoever to Licensee for loss or damage to Equipment or for loss of business resulting from loss or damage due to any causes other than the negligence or willful misconduct of Licensor. The foregoing disclaimer of responsibility of Licensor includes loss or damage caused by acts of third parties, and Licensor shall have no obligation to verify the right of any person claiming access to the Cabinet or to Licensee's Equipment placed elsewhere in the Building.

9.2. **Indemnity.**

(a) Subject to the limits of the Oregon Constitution and the Oregon Tort Claim Act, Licensee hereby indemnifies and holds Licensor harmless from and against any and all liabilities, claims, demands, costs and expenses of every kind and nature arising from any Loss caused in part or in whole by the negligent act or omission of Licensee or any Licensee Parties or when such Loss arises from any breach or default in the performance of any obligation on Licensee's part to be performed under the terms of this Agreement, or from any act or negligence of Licensee or any Licensee Parties (including reasonable attorneys' fees and expenses incurred in the defense of any such claim or any action or proceeding brought thereon) except to the extent caused by the negligence or willful misconduct of Licensor.

(b) Licensor hereby indemnifies and holds Licensee harmless from and against any and all liabilities, claims, demands, costs and expenses of every kind and nature arising from any Loss caused in part or in whole by the negligent act or omission of Licensor or any Licensor Parties or when such Loss arises from any breach or default in the performance of any obligation on Licensor's part to be performed under the terms of this Agreement, or from any act or negligence of Licensor or any Licensor Parties (including reasonable attorneys' fees and expenses incurred in the defense of any such claim or any action or proceeding brought thereon) except to the extent caused by the negligence or willful misconduct of Licensee.

10. **Insurance.** At all times during the term of this License, both Parties shall maintain sufficient insurance, or self-insurance, sufficient to satisfy their obligations under this Agreement and all requirements under applicable law.

11. **No Property Interest; Sole Use of Cabinet by Licensee; No Assignment or Sub-License.** Licensee acknowledges that the rights granted to Licensee hereunder do not constitute an easement, lease or tenancy of any portion of the Cabinet or the Building but only a license to occupy the Cabinet. Licensee shall not assign, mortgage, sub-license, encumber or otherwise transfer its rights hereunder directly or indirectly, including by a transfer of all or any portion of the ownership interests in or assets of Licensee, without Licensor's prior written consent, which consent may be withheld, conditioned or delayed in Licensor's sole and absolute discretion. Licensee further agrees that, without Licensor's written consent, neither the Space nor the Cabinet nor any part thereof shall be used or occupied, nor permitted to be used nor occupied, by any entity (including any affiliated entity) other than Licensee. This Agreement shall not be recorded and recording of it shall render Licensee in default without notice. By execution of this Agreement, Licensor expressly consents to Licensee will providing service for entities in Clackamas County for transport to the 910 Telecom building in Denver. As part of this service, the entity may request to have equipment placed in the rack that takes up no more than 4U of space. Any installation of such equipment will be subject to the applicable installation Fee set forth in Section 3.2 above.

12. **Subordination and Attornment.** All rights of Licensee hereunder are and shall be subject and subordinate in all respects to every deed of trust, mortgage or other security instrument or any ground lease, master lease, or primary lease, that now or hereafter covers all or any part of the Cabinet, the Space or the Building. This Section shall be self-operative, and no further instrument of subordination shall be required. Nonetheless, in confirmation of such subordination, Licensee shall promptly execute, acknowledge and deliver any instrument that Licensor or Landlord may reasonably request to evidence such subordination. Licensee shall attorn to any party succeeding to Licensor's interest in the Space and shall provide agreements confirming such attornment as the succeeding party may request. Licensee shall pay the Fees and other sums due and payable by Licensee under this Agreement to that successor when requested. A mortgagee succeeding to the interest of Licensor shall not be liable for any act or omission of a Licensor or bound by any modification of this Agreement not approved

by that mortgagee. When requested by Licensor or Landlord, Licensee shall execute, acknowledge and deliver estoppel statements on the status of the License.

13. **Assignment by Licensor/Termination of License by Licensor.** Licensor may freely sell, transfer and assign its right, title and interest in the Cabinet and the Space and assign all of its rights, duties and obligations hereunder ("**Transfer**"). Upon such Transfer, the transferee shall be deemed to have fully assumed the License and be liable for all obligations of Licensor that first arise after the Transfer and Licensor shall be free of all liabilities and obligations under this Agreement except those accruing prior to the Transfer.

14. **General Provisions.**

14.1. **No Joint Venture.** Neither Party is authorized to assume or create any obligation on behalf of, in the name of, or binding upon the other Party, nor shall this Agreement in any way create, give rise to, or be deemed a joint venture or partnership between the Parties.

14.2. **Signs.** Licensee shall place no signs or marking of any kind (except for a sign or other identification affixed to Licensee's Equipment and reasonably necessary to identify Licensee's Equipment, and which shall include a list of emergency contacts with telephone numbers), anywhere in the Building.

14.3. **Solicitation.** Licensee shall not, and shall make sure that its employees, independent contractors, agents and any other individuals accessing the Building, the Space and the Cabinet from time to time on behalf of the Licensee (collectively, "**Licensee Representatives**") shall not, during the Term of this Agreement and for a period of twelve (12) months thereafter, directly or indirectly (i) solicit, employ, offer to employ or engage as a consultant, any employee of Licensor or Landlord; or (ii) pay or offer to pay any employee of Licensor or Landlord any compensation (in cash or in kind), gifts or entertainment as an inducement (stated or implied) to perform any services in the Building. This provision shall survive the expiration or earlier termination of this Agreement.

14.4. **Force Majeure.** Licensor shall not be liable for any delay or failure to perform hereunder due to acts of God including fire, explosion, flood, rain or wind storm, earthquake, tornado, hurricane or other weather event or natural disaster; accident or physical calamity; vandalism or other criminal activity; cable or fiber cuts, utility curtailments, power failure (including failure of generators, batteries and other sources of power, whether primary or back-up); any court order or local ordinance, state or federal law or regulation of any department, agency, commission, or other instrumentality of one or more governmental agencies that are issued for reasons beyond Licensor's reasonable control; national emergency, civil disturbances, insurrection, riot, war, or acts of terrorism; strike, labor disputes or shortages, lockout or work stoppage, or other labor difficulties, shortages of equipment or supplies, unavailability of transportation; or any other event beyond Licensor's reasonable control whether similar or dissimilar to those enumerated above (each a "**Force Majeure**" event).

14.5. **No Waiver; Binding Effect; Amendment; Merger.** The failure of Licensor to enforce or insist upon compliance with any of the provisions of this Agreement or Licensor Rules or the waiver thereof in any instance shall not be construed as a waiver or relinquishment of any other instance, or of any other provision, of this Agreement or the Licensor Rules. This Agreement shall be binding upon and inure to the benefit of the Parties and their respective successors and assigns, except as provided in Section 11. This Agreement may not be amended except by an instrument in writing, executed by the Parties. This Agreement supersedes and merges all prior agreements, promises, understandings, statements, representations, warranties, indemnities and covenants and all inducements to the making of this Agreement relied upon by either Party, whether written or oral, and embodies the Parties' complete and entire agreement with respect to the subject matter hereof. No representation, statement or agreement, oral or written, made before the execution of this Agreement and no course of dealings or conduct between the Parties shall vary or modify the written terms hereof in any way whatsoever.

14.6. **Choice of Law; Severability.** This Agreement shall be in all respects governed and construed and enforced in accordance with the law of the State of Colorado, including all matters of construction, validity and performance, without regard to its conflicts of law principles. If any term or provision of this Agreement is determined to be illegal, unenforceable or invalid in whole or in part, for any reason, such illegal, unenforceable or invalid provision or part shall be replaced by a valid and enforceable provision as similar as possible to the original.

14.7. **Representation of Authority.** Each Party represents and warrants to the other that the execution and delivery of this Agreement and the performance of such Party's obligations hereunder have been duly authorized, and that this Agreement is a valid and legal agreement binding on each Party and enforceable in accordance with its terms.

14.8. **Counterparts; Agreement by Facsimile or Electronic Transmission.** This Agreement may be executed in one or more counterparts, each of which shall constitute an original but all of which, taken together, shall constitute one and the same instrument. Each Party agrees that the execution and delivery of this Agreement by facsimile or electronic signature shall have the same force and effect as delivery of original signatures.

14.9. **Notices.** Except as otherwise specified, all notices or consents required or permitted to be given hereunder

shall be in writing and shall be deemed to be duly given when (a) delivered by hand (with written confirmation of receipt), (b) upon receipt or three days after being mailed by certified mail, return receipt requested, (c) when received by the addressee, if sent by a nationally recognized overnight delivery service (receipt requested) (d) sent by telecopier (with written confirmation of receipt), or (e) sent by electronic mail, provided in case of delivery under (d) or (e) that a copy is also mailed by certified mail, return receipt requested, in each case to Licensor's and Licensee's Addresses as shown on page one hereof or to such other addresses and telecopier numbers as a Party may designate by notice to the other Party.

14.10. **Use of Names.** Licensee grants to Licensor a license to use Licensee's name and logo in connection with Licensor's marketing and publicity efforts, including use in press releases, brochures and advertising, without payment by Licensor of any royalty or other fee. In advertising or other publicity, without the prior written consent of the Landlord, DGE Management, LLC, Licensee shall use neither the name of the Building, except as the address of its business, nor use any pictures or images of the Building, nor shall Licensee misrepresent the name of the Building. Licensee shall not represent that it operates the Meet-Me-Room or Meet-Me-Points in the Building.

14.11. **Competition.** Licensee recognizes, acknowledges, and agrees that Licensor currently licenses space to entities that compete directly or indirectly with Licensee and that Licensor has and reserves the right to enter into license agreements and other agreements in the future with entities that compete directly or indirectly with Licensee.

14.12. **Time of the Essence.** Time is of the essence in all things to be done, including all payments to be made by Licensee under this Agreement.

14.13. **Incorporation of Exhibits.** All Exhibits attached to this Agreement are incorporated by this reference.

14.14. **Construction.** Headings are for convenience of reference and shall not be considered in construing this Agreement. Use of the singular number shall include the plural and use of one gender shall include the other genders as appropriate in context. "**Including**" as used herein shall be construed in each case to mean including without limitation.

14.15. **Deliveries.** Licensee assumes full responsibility and liability for any delivery services, US Mail, or freight services deliveries made to the Premises, including any deliveries dropped off in the hallway or management office of the Building

15. **Resolution of Disputes.** Licensor and Licensee shall endeavor in good faith to informally resolve any disputes which may arise under this Agreement.

16. **OFAC Representations.** Licensee represents and warrants to Licensor that neither Licensee nor any Licensee Parties and none of their respective employees, officers, directors, representatives or agents, is a person or entity with whom U.S. persons or entities are restricted from doing business with under regulations of the Office of Foreign Assets Control ("**OFAC**") of the United States Department of Treasury (including those named on OFAC's Specially Designated and Blocked Persons List) or under any statute, executive order (including the September 23, 2001, Executive Order Blocking Property and Prohibiting Transactions with Persons Who Commit, Threaten to Commit, or Support Terrorism) or other governmental action. Licensee further represents and warrants to Licensor that Licensee shall at all times during the Term of this Agreement (including any extensions or renewals) remain in compliance with the regulations of the OFAC of the United States Department of Treasury (including those named on OFAC's Specially Designated and Blocked Persons List) or under any statute, executive order (including the September 23, 2001, Executive Order Blocking Property and Prohibiting Transactions with Persons Who Commit, Threaten to Commit, or Support Terrorism) or other governmental action.

17. **Debt Limitation.** This Agreement is expressly subject to the limitations of the Oregon Constitution and Oregon Tort Claims Act and is contingent upon appropriation of funds. Any provisions herein that conflict with the above referenced laws are deemed inoperative to that extent.

18. **Compliance with Applicable Law.** Both Parties shall comply with all applicable local, state and federal ordinances, statutes, laws and regulations. All provisions of law required to be a part of this Agreement, whether listed or otherwise, are hereby integrated and adopted herein. Failure to comply with such obligations is a material breach of this Agreement.

19. **Attorney Fees.** In the event any action or proceeding, including any bankruptcy proceeding, is instituted to enforce any term of this Agreement, the prevailing party in such action or proceeding shall be entitled to recover reasonable attorney fees and costs from the other party.

20. **Public Contracting Provisions.** The provisions of Oregon public contracting law, ORS 279B.020 through 279B.235, to the extent applicable, are incorporated herein by this reference.

21. **Environmental Matters.**

21.1. **Licensee's Obligations.**

(a) Licensee shall not cause or permit the use, treatment, storage or disposal of any Hazardous Materials or

Hazardous Waste in, on or about any part of the Building except small amounts of Hazardous Materials generally found in normal office and telecommunication equipment environments which shall be used, stored, transported and disposed of in compliance with all Environmental Laws.

(b) Subject to the limits of the Oregon Constitution and the Oregon Tort Claim Act, Licensee shall defend, indemnify and hold Licensor and the Licensor Parties harmless from and against all direct claims, costs, expenses, liabilities and penalties, including reasonable attorneys' and consultants' fees and costs arising out of or in connection with Licensee's breach of its obligation under Section 21.1(a). The obligations under this Section will survive termination of this Agreement.

(c) For purposes of this Article, "**Hazardous Materials**" means asbestos, explosives, radioactive materials, and any other materials or substances regulated under the Comprehensive Environmental Response Compensation Liability Act of 1980, as amended, 42 U.S.C. Sec. 9601-9657 ("CERCLA"), the Resource Conservation Recovery Act of 1976, 42 U.S.C. Sec. 6901-6987; the Occupational Safety and Health Act of 1970, 29 U.S.C. 651 et seq., or any other federal, state or local statute, law, ordinance, code, rule, regulation, order or decree regulating, relating to, or imposing liability or standards of conduct concerning protection of the environment or public health now or at any time hereafter in effect (collectively, "**Environmental Laws**"). "**Hazardous Waste**" means hazardous waste as defined under the Resource Conservation Recovery Act of 1976, 42 U.S.C. Sec. 6901-6987 as well as any petroleum or petroleum-based product, including, but not limited to, waste oil.

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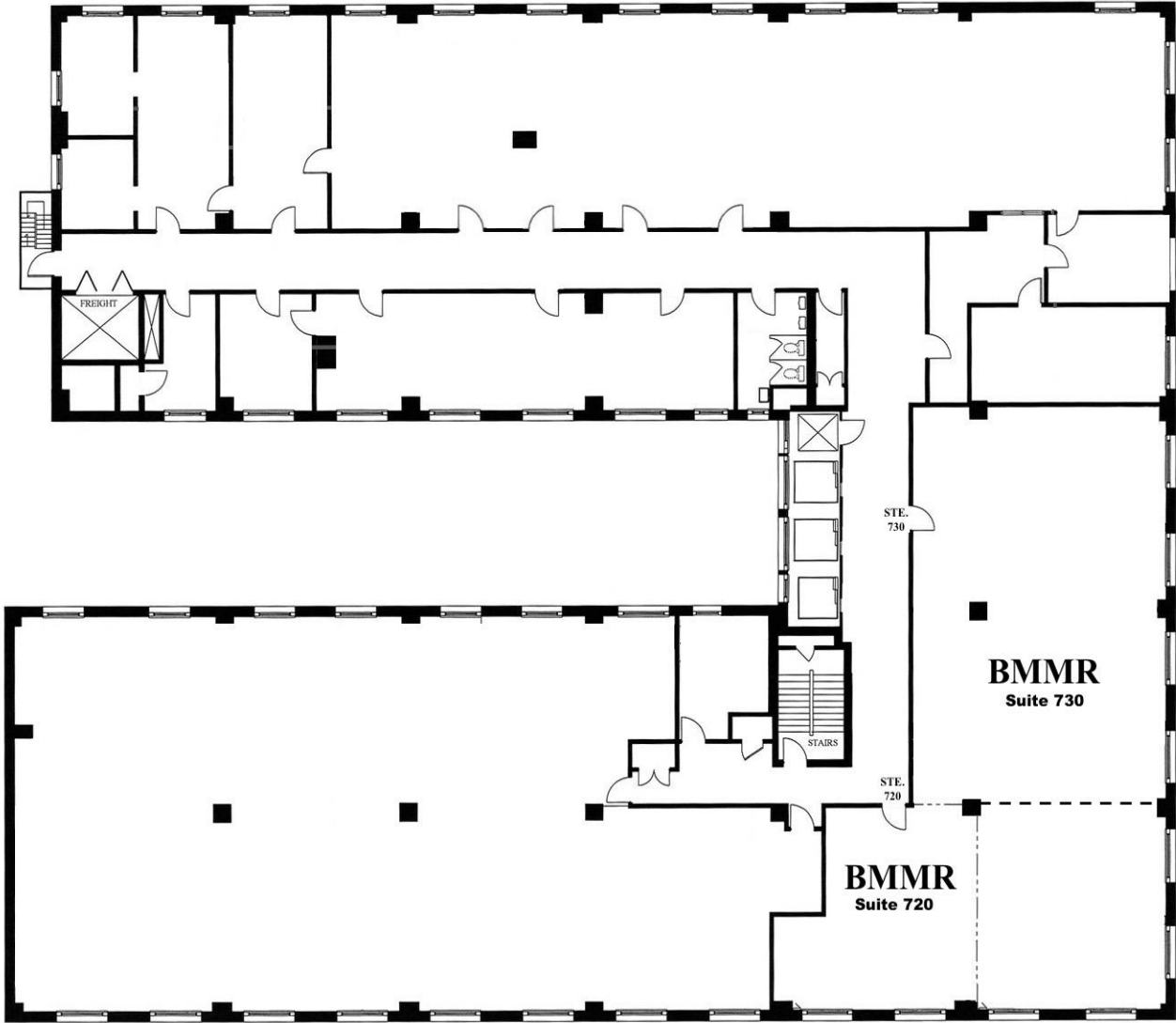
LANDLORD APPROVAL

The undersigned represents and warrants that it owns the Denver Gas and Electric Building and hereby recognizes and approves the foregoing Agreement dated _____, 2021 between DGEB MMR, LLC, a Colorado limited liability company, as Licensor and _____, as Licensee.

DGEB MANAGEMENT, LLC
a Colorado limited liability company

By: _____
Jim Latisis, General Manager

EXHIBIT A
LOCATION OF THE SPACE



SEVENTH FLOOR



910-15th Street, Suite 500, Denver, Colorado 80202 | Denver Gas & Electric Building

Licensee's acknowledgement _____

EXHIBIT B

FEES

Description - Clackamas County / CBX Network	Monthly Recurring Charge (MRC)	Non-Recurring Charge (NRC)
Space:		
Suite 730 - 701.15 - 1 Full Cabinet (42 RU)	\$750.00	
Power:		
True A/B 40AMP (15A/15B) AC Power @ \$19.50 Per Amp (208v) Calc: A Side = (15A * \$13.00 = \$195.00) + B Side = (15A * \$6.50 = \$97.50)	\$292.50	
Connectivity (Per Pair): Billed to Requesting Customer		
Cross Connection(s) - Including Rack-to-Rack	\$150.00	
Cross Connection(s) - Installation		\$400.00
Cross Connection(s) - Disconnection		\$150.00
Remote Hands:		
Normal Hours: 7AM to 4PM MT - per hour (1 hour minimum)		\$100.00
After Hours: 4PM to 7AM MT - per hour (2 hour minimum)		\$200.00

Licensee's acknowledgement _____

EXHIBIT C
LICENSOR RULES

The following are the Licensor Rules referred to in this Agreement with which Licensee agrees to comply:

- (a) Licensee shall not leave any trash or empty boxes in the Cabinet or the Space; any trash or empty boxes not properly disposed of by Licensee are subject to removal by Licensor with any associated charges to be billed and invoiced to Licensee.
- (b) No food or beverages of any kind shall be permitted in or around the Cabinet.
- (c) Licensee shall ensure that the Licensee's ingress to and egress from and activities within the Cabinet and the Space, as well as the Licensee Equipment and property and area surrounding Licensee's Cabinet do not pose safety hazards to any person or equipment or area of any other licensee of Licensor or any occupant of the Building.
- (d) Licensee shall promptly remove any electrical hazards and trip and slip hazards.
- (e) No Licensee Equipment or property of any kind shall protrude beyond the Cabinet nor shall any Licensee Equipment or property extend into, encroach upon or otherwise interfere with the Cabinet of any other licensee of Licensor.
- (f) Licensee shall not store anything outside of the Cabinet.
- (g) Licensee shall not jeopardize Licensor's ability to conduct its facilities operations or any other activities of any licensee of Licensor.
- (h) Combustible or hazardous material may not be stored in the Cabinet or elsewhere in the Space or the Building.
- (i) Licensee shall make reasonable commercial efforts to ensure that the Licensee's Equipment and property will not interfere in any way with the equipment, property or use of the Space by other licensees of Licensor or by occupants of the Building.
- (j) Licensee agrees to take precautions to protect the Space and nearby equipment belonging to or used by other licensees of Licensor while performing any work in the Cabinet and the Space.
- (k) No windows shall be opened in any part of the Cabinet or the Space or any part of the Building without the prior written permission of the Licensor.
- (l) Licensee shall not allow, permit or suffer any noise, smoke or odor to escape from the Cabinet, or any noise in excess of local zoning requirements or industry standards.

Licensee's acknowledgement _____

EXHIBIT D

ACCESS AND PLANS FOR WORK REQUEST FORM

1. Clackamas County / CBX Networks ("**Licensee**") requests permission to access another location within the Denver Gas and Electric Building make a cross connection within the DGEB MMR Space or perform new work within Cabinet on (*date*)_at approximately_____(*am/pm*).
2. The purpose of such Access or Plans for Work is: _____

_____.
3. Have Plans and Specification been submitted to Licensor? Yes No

Licensee accepts sole responsibility for all costs, expenses and damages ("*Costs*") related to the proposed entry into a tenant's leased premises, releases the Licensor, DGEB Management, LLC, and their members, managers, employees and agents (the "*Indemnified Parties*"), from any liability for such Costs, and indemnifies the Indemnified Parties for any amounts claimed to be due from them as a result of Licensee's entry into a tenant's leased premises or another licensee's cabinet or licensed area.

Licensee _____

By: _____

Date: _____

Name: _____

Title: _____

Licensor approves Access or Work Plans to be performed on the premises? Yes No

By: DGEB MMR, LLC

Date: _____

Name: _____

Title: _____

Licensee's acknowledgement _____

Licensee's acknowledgement _____