

LEASE AGREEMENT

This Lease Agreement ("Lease"), is made by and between the City of Coburg ("City") and Douglas Fast Net, Douglas Services, Inc. ("DFN").

RECITALS

- A. WHEREAS, City owns property located at 91201 Shane Street, in Coburg, Oregon, the current site of the Coburg Water Booster Station ("the Property").
- B. WHEREAS, DFN currently maintains a telecommunications hut on the premises of the Property at the location of the City's Water Booster Station. The hut serves as a Point of Presence (POP) for telecommunications services within the City.
- C. WHEREAS, the parties wish to memorialize the lease by DFN of that space.

NOW, THEREFORE, in consideration of the terms and conditions set forth herein, the parties agree as follows:

AGREEMENT

1. **PREMISES.** The Premises leased includes an area approximately 20' x 20', immediately south of the water towers within the Water Booster Station fenced area. See Exhibit A.
2. **AGREEMENT TO LEASE.** City agrees to lease the premises to DFN according to the terms and conditions set forth herein.
3. **TERM.** This Agreement will be for a term beginning on August 1, 2022 and ending on July 31, 2032, unless terminated earlier as provided in this Agreement. This Agreement shall be renewed automatically for a term of ten (10) years each unless either party gives written notice to the other at least ninety (90) days prior to the expiration of the original term.
- 4.
5. **CONSIDERATION.** The estimated monetary value of this lease is approximately \$3000 annually. In consideration for City allowing DFN to use the Premises, DFN will provide necessary equipment in order for City Hall to connect to the POP at no charge.
6. **USE OF PREMISES.** At its own expense, DFN may install, maintain, repair, upgrade, and replace equipment necessary to operate and manage a fiber based POP for the purpose of providing telecommunications services to City. DFN may also construct and maintain a fence around the Premises. DFN may not otherwise alter or modify the

Commented [DAC1]: You should distinguish between Property and Premises, with Premises maybe being the leased property. There is some ambiguity down below, Section 4, whether the fence being referred to is the fence around the property, or the fence around the cabinet.

Commented [AH2]: DFN Should identify correct description of equipment

Commented [AH3]: DFN Should confirm size of area in use

Commented [DAC4]: Is this an estimation of annual rate? If so, say "annually."

Commented [DAC5]: Are they only providing equipment? Are they providing any services? That would be \$3000 a year for ten years. We need to make sure we're not giving away the farm.

Premises without prior written consent of the City, which consent shall not be unreasonably withheld.

7. MAINTENANCE OBLIGATIONS.

- A. City shall maintain the fencing for the Water Booster Station and the surrounding area, including the Premises, at the current existing level.
- B. DFN shall keep the Premises, including its equipment and fencing in good repair, operating condition, working order, and appearance. This includes insuring that the battery in the cabinet is operational. All equipment and fencing shall be clearly labelled with emergency contact numbers for DFN.
- C. Following the initial installation of its equipment, including telecommunications wiring, cables and conduit, buildings and fencing, DFN will not make any improvements or alterations (including, but not limited to, installation of computer and telecommunications wiring, cables, and conduit) on the Premises without first obtaining City's prior written consent. All alterations shall be made in a good and workmanlike manner, and in compliance with applicable laws and building codes.
- D. At termination of the Agreement, the Premises will be returned to City in a condition adequate for City to use for other purposes.

Commented [DAC6]: Not sure what this means? Is the City supposed to maintain landscaping? Or what?

- 7. **ELECTRICITY.** City will provide electrical power to the cabinet, provided DFN's total electrical usage will not exceed 22 KW per month, and only as long as DFN is providing services within the City to City's anchor institutions (City Hall, IOOF (City Leased Building), charter school, and fire station) as well as local businesses and private residences. In the event either party requires additional electrical power, necessitating additional electrical wiring, fixtures, or equipment, the party needing additional power shall cover the costs of such construction and/or improvements. City shall not be responsible for any loss or damage resulting from an outage.
- 8. **RIGHT OF ENTRY.** City has the right to enter property, at any time, and for any Reason. Lessor will make reasonable attempt to notify DFN of entry.
- 9. **ASSIGNMENT & SUBLETTING.** DFN may not assign this Agreement as to any portion or all of the Premises or make or permit any total or partial sublease or other transfer of any portion or all of the Premises.
- 10. **INSURANCE.** At all times during the term of this Agreement, DFN shall, at its own expense, keep in effect and deliver to City liability insurance policies, satisfactory to City, for the Premises.
- 11. **INDEMNITY REGARDING USE OF PREMISES.** To the extent permitted by law, DFN agrees to indemnify, hold harmless, and defend City from and against any and all

Commented [AH7]: DFN should confirm KW needed for equipment on a monthly basis

losses, claims, liabilities, and expenses, including reasonable attorney fees, if any, which City may suffer or incur in connection with DFN's possession, use or misuse of the Premises, except City's act or negligence.

12. COMPLIANCE WITH REGULATIONS. DFN shall obtain all certificates, permits, zoning, and other approvals that may be required by any federal, state, or local authority. DFN shall also comply with all laws, rules, and regulations.

13. TERMINATION

- A. This Agreement will terminate on its expiration date, July 31, 2032, unless terminated earlier under this Agreement.
- B. If the Premises or any portion thereof is destroyed or damaged so as to materially hinder effective use of DFN's equipment, through no fault or negligence of DFN, DFN may elect to terminate this Agreement upon thirty (30) days' written notice to the City. In such event, all rights and obligations of the parties shall cease as of the date of the damage or destruction.
- C. Either party may terminate this Agreement for any reason upon ninety (90) days' written notice to the other party. Upon such termination, Hunter shall surrender possession of the Premises and shall remove all fixtures and equipment at its own expense. If Hunter fails to remove such equipment within thirty (30) days, the equipment shall become the property of the City.
- D. Either party may, by written notice specifying the nature and extent of the breach, terminate this Agreement in the event of a material breach by the other party, provided that the terminating party is not also in material breach, and provided that the breaching party shall have a right to cure any such breach, if curable, within 30 days of receipt of such notice. This Agreement will terminate upon the breaching party's receipt of notice, if breach is curable, or upon the expiration of the 30-day cure period, if breach is curable but has not been cured within the required time period.
- E. Upon termination, DFN shall surrender possession of the Premises and shall remove all fixtures and equipment at its own expense. If DFN fails to remove such equipment within thirty (30) days, the equipment shall become the property of the City.

14. DEFAULT; REMEDIES.

- A. The following shall be events of default:
 - 1. Dissolution, termination of existence, insolvency, business failure, discontinuance as a going business, appointment of a receiver of any of the

Premises, assignment of the benefit of creditors, or commencement of any proceedings under any bankruptcy or insolvency laws by or against DFN.

2. Failure of either party to comply with any term or condition, or fulfill any other obligation of the Agreement within 30 days after written notice by the other party specifying the default with reasonable particularity.
3. Use of electricity by DFN in excess of the maximum limit set forth in Section 7.
4. Abandonment of the Premises by DFN.

B. Upon default by DFN, City may immediately terminate the Agreement, take possession of the Premises, and remove any persons or property by legal action or by self-help with the use of reasonable force and without liability for damages. Lessee shall be responsible for any reasonable costs associated with any clean up or repair to the Premises following termination.

C. City's remedies upon default are cumulative and in addition to all other remedies available to Lessor under applicable law.

15. NOTICES. All notices, requests, demands, and other communications hereunder, except for notices regarding entry to the Premises, will be in writing and will be deemed given by personally delivered or mailed, certified mail, return receipt requested, to the following address:

If to the City: City of Coburg
 PO Box 8316
 Coburg, OR 97408

If to DFN : Todd Way
 2350 NW Aviation Drive
 Roseburg, Oregon 97470

16. GOVERNING LAW. This Agreement will be governed by and construed in accordance with Oregon law, including choice of law provisions. Jurisdiction and venue for all legal disputes, including arbitration, will be in Lane County, Oregon.

17. ATTORNEY FEES. In the event either party institutes a suit to enforce any rights hereunder, the prevailing party will be entitled to recover at trial or on appeal court costs and reasonable attorney's fees incurred as a result thereof.

18. ENTIRE AGREEMENT. This Agreement constitutes the entire agreement and understanding of the parties and supersedes all offers, negotiations, and other agreements of any kind.

19. MODIFICATION. Any modification of or amendment to this Agreement must be in writing and executed by both parties.

20. SEVERABILITY. If any portion of this Lease shall be held to be invalid or unenforceable for any reason, the remaining provisions shall continue to be valid and enforceable. If a court finds that any provision of this Lease is invalid or unenforceable, but that by limiting such provision it would become valid and enforceable, then such provision shall be deemed to be written, construed, and enforced as so limited.

21. WAIVER. The failure of either party to enforce any provisions of this Lease shall not be construed as a waiver or limitation of that party's right to subsequently enforce and compel strict compliance with every provision of this Lease.

City of Coburg:

Printed Name

Date

Signature

**Douglas Fast Net
Douglas Services, Inc. :**

Printed Name

Date

Signature

Printed Name

Date

Signature