



## RESOLUTION 2009-056

### **A RESOLUTION ACCEPTING A SETTLEMENT AGREEMENT WITH VERIZON FOR FRANCHISE FEES OWED FROM JANUARY 1, 2002 THROUGH DECEMBER 31, 2005**

**WHEREAS**, the Oregon Municipal Audit Review Committee (OMARC) contracted for auditing services to audit Verizon Franchise Fees and Privilege Taxes for January 1, 2002 through December 31, 2005 on behalf of Oregon cities; and

**WHEREAS**, Verizon has agreed to a settlement with the Oregon cities part of OMARC; and

**WHEREAS**, Verizon agrees to pay the City of Sherwood \$63,354 to settle the audit; and

**WHEREAS**, the agreement is conditioned upon all cities accepting its terms and the City of Sherwood does not have the option to change the agreement or try to negotiate different terms with Verizon; and

**WHEREAS**, the City Council finds that it is in the best interest of the City to accept the settlement terms and resolve the audit; and

### **NOW, THEREFORE, THE CITY OF SHERWOOD RESOLVES AS FOLLOWS:**

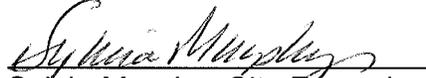
**Section 1:** The City accepts the settlement agreement with Verizon for franchise fees owed for January 1, 2002 through December 31, 2005, and authorizes the City Manager to execute the settlement agreement substantially in the form attached hereto as Exhibit A.

**Section 2:** This resolution is effective upon its adoption by the city council.

**Duly passed by the City Council this 21<sup>st</sup> day of July 2009.**

  
Keith S. Mays, Mayor

Attest:

  
Sylvia Murphy, City Recorder

## SETTLEMENT AGREEMENT

This Settlement Agreement ("Agreement") is between Verizon Northwest Inc. ("Verizon"), a Washington corporation, and Sherwood ("City"), an Oregon municipal corporation. Verizon and the City are referred to collectively herein as "the Parties."

### RECITALS

- A. Verizon pays to the City a Privilege Tax/Franchise Fee on exchange access service revenue pursuant to Oregon Revised Statutes 221.515 ("Privilege Tax").
- B. A group of Oregon cities formed the Oregon Municipal Audit and Review Committee ("OMARC"), to review and analyze Privilege Tax revenues received from Verizon ("Review").
- C. There is a dispute between Verizon and OMARC regarding the alleged under- or overpayments due to the City for the review period commencing on January 1, 2002 and continuing through December 31, 2005 ("Review Period"), which, if underpaid, would constitute a debt to the City.
- D. Verizon and the City are desirous of avoiding further expense in undertaking the Review, and desire and agree to provide for payment, in accordance with the terms of this Settlement Agreement, and thereby to settle and resolve any and all potential claims and disputes between them with respect to the Privilege Taxes paid during the Review Period, except as set forth herein ("the Claim").

**NOW, THEREFORE**, the Parties, through their undersigned representatives who are fully authorized to take the actions contemplated herein, pursuant to the foregoing recitals and in consideration of the following mutual promises, covenants and agreements, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, agree as follows:

## AGREEMENT

1. **Privilege Tax.** The City and Verizon agree that, subject to Section 4 of this Agreement, in consideration for the payment of the Claim in the amount set forth in Section 3 of the Agreement, Verizon shall be deemed to, and shall have paid all of the Privilege Tax that was due and owing for the Review Period, including interest or penalties, and that upon payment of such amount, the City shall not undertake any collection activity with respect to the Privilege Tax for the Review Period except as provided for herein.

2. **Effective Date.** The Effective Date of the Agreement shall be the date of the last signature hereon, however, it is the intent of Verizon to enter into a similar agreement with the other Oregon cities listed in Exhibit A and notwithstanding the date of the last signature in this Agreement, this Agreement will not be effective until the date of the last signature on all Agreements with each of the Oregon cities listed in Exhibit A. Should an Agreement not be secured by Verizon with any one of the cities listed in Exhibit A, this Agreement will not be effective.

3. **Amount.** Within sixty (60) days of the Effective Date, Verizon agrees to pay the City and the City agrees to accept from Verizon the total amount of \$63,354 ("the Amount"). Subject to Section 4 of this Agreement, the City agrees that receipt by the City of payment of the Amount shall constitute a release by the Parties of all claims, known and unknown, that each party may have against the other with respect to the Privilege Tax for the Review Period ("Released Claims"). Payment shall be made at the address provided for notices in Section 9 of this Agreement. Regardless of the Effective Date, Verizon and the City agree that for purposes of any interest owed on the Privilege Tax during the Review Period pursuant to any applicable agreement between Verizon and the City and/or OMARC, the Amount will be deemed to have been paid on December 31, 2008.

4. **No Waiver.** The Parties acknowledge that there is a dispute regarding the calculation of revenues subject to payment of Privilege Taxes under Oregon law. The Parties agree that this payment is made for the purpose of compromise and for the purpose of concluding the Review. Notwithstanding any other provision of this Agreement, including the release set forth in paragraph 3, Verizon and the City each reserve their rights in all other forums and contexts

concerning the interpretation of Oregon law and administrative rules and any other applicable regulation concerning the calculation, collection and payment of Privilege Taxes. Subject to the terms of any other applicable agreement between Verizon and the City and/or OMARC, the City expressly reserves the right to assert any claims it may have regarding Verizon's calculation of revenues, subsequent to December 2005, that are subject to the payment of Privilege Taxes under Oregon law. The Released Claims include all claims for under or overpayments of the Privilege Tax for the Review Period.

5. This Agreement does not apply to, or release Verizon from payment of any taxes or fees, other than the Privilege Tax.

6. **No Admission.** The Parties agree that this Agreement is made solely for purposes of settlement and that by entering into this Agreement neither of the Parties is making any admissions as to the substantive factual or legal issues regarding the Claim, and that in the event of future unrelated disputes regarding payment of the Privilege Tax that become due and owing after the Review Period, that this Agreement may not, and shall not, be introduced into evidence in any administrative or judicial action.

7. **Voluntarily Entered.** The Parties represent and warrant that this Agreement is entered into voluntarily by the Parties with full knowledge of the consequences and implications of the obligations set forth herein. The Parties also represent and warrant that they have had the opportunity to be represented by counsel of their choice throughout the negotiations which preceded the execution of this Agreement, and in connection with the preparation and execution of this Agreement, and that they have carefully and thoroughly reviewed this Agreement in its entirety.

8. **Entire Agreement.** This Agreement constitutes the entire agreement between the Parties with respect to the subject matter of this Agreement and may be amended or modified only by a writing signed by the Parties hereto. Notwithstanding any provision of this Agreement, this Agreement does not supersede any prior written agreements between Verizon and the City and/or OMARC.

**9. Notices.** All notices required or permitted to be given or to be made upon any party hereto shall be in writing and shall be personally delivered or sent by registered or certified mail, postage prepaid, return receipt requested, and shall be deemed to have been received for purposes of this Agreement on the day the notice is personally delivered or deposited in the mail.

(a) All notices to Verizon regarding this Agreement should be sent to:

Mark Scovic  
Mail Code HQE01H02  
600 Hidden Ridge  
Irving TX 75038

David Mielke  
Mail Code HQE02E70  
600 Hidden Ridge  
Irving TX 75038

(b) All notices to the City regarding this Agreement should be sent to:

Keith Mays  
Mayor  
22560 SW Pine Street  
Sherwood, OR 97140

**10. Governing Law; Venue.** The terms, provisions, interpretations and enforcement of this Agreement shall be governed by the laws of the State of Oregon, without regard to conflict of laws analysis. Any litigation between the Parties arising out of or related to this Agreement shall be brought and maintained in the Circuit Court for Washington Oregon. Provided, if any litigation arising under this Agreement is brought in a federal forum, it shall be brought and maintained in the United States District Court for the District of Oregon in Portland, Oregon.

**11. Binding Obligation.** The obligations of the Parties set forth in this Agreement shall be binding on the Parties, their successors and assigns.

**12. Warranty of Authority.** Each party to this Agreement hereby covenants and represents that the individual signing on its behalf is fully empowered to bind the party to the obligations and commitments set forth herein.

**13. Counterparts.** This Agreement may be executed in counterparts and by facsimile, and, if so executed, will be effective as if simultaneously executed at the time of receipt of the last executed counterpart.

**14. No Party Deemed Drafter.** The Parties agree that this Agreement has been negotiated by the Parties, by and through their respective counsel, all of whom have participated in the drafting hereof. The Parties agree that any rule of construction which provides that a document is to be construed against the draftsman shall not apply.

**15. Severability.** In case any one or more of the provisions of this Agreement shall be found to be invalid, illegal or unenforceable in any respect, the validity, legality and enforceability of the remaining provisions contained in this Agreement shall not in any way be affected or impaired. Further, any provision found to be invalid, illegal or unenforceable shall be deemed, without further action on the part of the Parties to this Agreement, to be modified, amended and/or limited to the minimum extent necessary to render such clauses and/or provisions valid and enforceable.

**16. No Assignment.** City represents and warrants that it has not previously pledged, encumbered, assigned or transferred, or purported to pledge, encumber, assign or transfer any Released Claims.

**IN WITNESS WHEREOF**, the undersigned Parties have duly executed this Agreement to be effective on the date as set forth in Section 2 hereof.

VERIZON NORTHWEST INC.

CITY OF Sherwood

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

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

Name: David Valdez

Name: \_\_\_\_\_

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

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

Date: \_\_\_\_\_

Date: \_\_\_\_\_