



Home of the Tualatin River National Wildlife Refuge

## RESOLUTION 2012-053

### **A RESOLUTION AUTHORIZING THE CITY MANAGER TO SIGN THE FIBER OPTIC ACCESS AGREEMENT WITH THE OREGON DEPARTMENT OF TRANSPORTATION FOR THE PURPOSE OF SHARING FIBER RESOURCES AND CONNECTIVITY OF FACILITIES**

**WHEREAS**, the City of Sherwood's Public Safety Division has a need for greater connectivity to Washington County Consolidated Communications Agency (WCCCA) enabling increased productivity to the Computer Aided Dispatch (CAD) system; and

**WHEREAS**, the Oregon Department of Transportation has a need for connectivity on Highway 99w to improve their traffic control system in Sherwood; and

**WHEREAS**, the City of Sherwood and the Oregon Department of Transportation have fiber optic networks in close proximity of each other and have connectivity on Highway 99w and the Washington County Consolidated Communications Agency; and

**WHEREAS**, The Sherwood City Council hereby resolves that signing the Fiber Optic Access Agreement with the Oregon Department of Transportation will benefit the City's Public Safety Division and residents of the City of Sherwood.

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

**Section 1.** The City Manager is authorized to sign the Fiber Optic Access Agreement with the Oregon Department of Transportation, Agreement #28919 attached as Exhibit A.

**Section 2.** This Resolution shall be effective upon its approval and adoption.

**Duly passed by the City Council this 18<sup>th</sup> day of September 2012.**

  
Keith S. Mays, Mayor

Attest:

  
Sylvia Murphy, CMC, City Recorder

**INTERGOVERNMENTAL AGREEMENT  
Fiber Optic Access Agreement**

THIS AGREEMENT is made and entered into by and between the STATE OF OREGON, acting by and through its Department of Transportation, hereinafter referred to as "ODOT;" and THE CITY OF SHERWOOD, acting by and through its elected officials, hereinafter referred to as "CITY," both herein referred to individually or collectively as "Party" or "Parties."

**RECITALS**

1. By the authority granted in Oregon Revised Statute (ORS) 190.110, state agencies may enter into agreements with units of local government for the performance of any or all functions and activities that a party to the agreement, its officers, or agents have the authority to perform.
2. ODOT entered into Agreement No. 27333 with Washington County for ODOT's US26: VMS 185 to Cornell/Sherwood/I-84 at 223<sup>rd</sup> Project that covers the design and installation of variable message signs, cameras and road weather information systems.
3. This Agreement will allow ODOT and CITY to cooperatively deploy a fiber optic network for joint use. The fiber optic network will improve traffic management in the Sherwood area, improve data sharing for incident management and transportation operations, as well as, provide connectivity with other public entities, while reducing operating costs associated with Intelligent Transportation Systems (ITS) and traffic management equipment deployment.

**NOW THEREFORE**, the premises being in general as stated in the foregoing recitals, it is agreed by and between the parties hereto as follows:

**TERMS OF AGREEMENT**

1. Under such authority the ODOT and CITY agree to exchange access to fiber optic cables and related facilities as shown on Exhibit A, attached hereto and by this reference made a part hereof (the "Project").
2. Except as otherwise set forth in this Agreement, each Party is responsible for its individual costs associated with the installation, maintenance, and operation of the Project.
3. The term of this Agreement shall begin on the date all required signatures are obtained and shall terminate ten (10) calendar years following the date all required signatures are obtained.

## **ODOT OBLIGATIONS**

1. ODOT shall provide CITY access to one (1) fiber pair from the ODOT camera control cabinet located on the West side of Interstate Five (I-5) next to the southbound I-205 off ramp to the ODOT control cabinet at Highway 26 and 185th Avenue, as shown in Exhibit A.
2. ODOT shall provide CITY with two (2) fiber pairs on ODOT-installed laterals at the following intersections with 99W: Sunset Boulevard, Meinecke Road and Edy Road. (The fiber referred to in paragraphs 1 and 2 of this Section shall collectively be referred to as "ODOT Fiber.")
3. ODOT shall provide to CITY, space inside the ODOT traffic control cabinets at the five (5) 99W intersections in Sherwood for CITY to place its network equipment.
4. ODOT shall, at its own expense, install one (1) CITY-provided CAT5e or better cable, and CITY-provided wireless radio at the the following intersections with 99E (for a total of four (4) radios): Tualatin Sherwood Road., Edy Road., Meinecke Road., and Sunset Boulevard.
5. ODOT shall allow use of ODOT conduit by CITY at the Solar Site that runs to the ODOT camera control cabinet, as shown in Exhibit A.
6. ODOT shall maintain the ODOT Fiber and notify CITY of any expected outages. Any unexpected outages shall be repaired by ODOT as soon as reasonably practicable.
7. ODOT grants CITY the right to enter onto ODOT right of way for the performance of duties as set forth in this Agreement.
8. ODOT's Project Manager for this Project is Nathan Potter, Consultant Project Manager, ODOT – Region 1, 123 NW Flanders Street Portland, Oregon 97209, 503-731-4986, [Nathan.K.POTTER@odot.state.or.us](mailto:Nathan.K.POTTER@odot.state.or.us), or assigned designee upon individual's absence. ODOT shall notify the other Party in writing of any contact information changes during the term of this Agreement.

## **CITY OBLIGATIONS**

1. CITY shall provide ODOT access to one (1) fiber pair along Highway 99W, starting at the Edy Road intersection and ending at the Sunset Road intersection, as shown in Exhibit A.
2. CITY shall, at its own expense, construct a fiber optic cable from the shared ODOT vault at the ODOT Solar Site located at the I-5/I-205 interchange, to the ODOT camera control cabinet located on the West side of I-5 next to the southbound I-205 off ramp, as shown in Exhibit A. (The fiber referred to in paragraphs 1, 2, and 3 of this Section shall collectively be referred to as "CITY Fiber".)

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3. CITY shall designate one (1) conventional/course (CWDM) optical wavelength from the ODOT camera control cabinet to the first ODOT fiber access point on 99W in Sherwood for ODOT's exclusive use, as shown in Exhibit A (the "Wavelength").
4. CITY shall provide and maintain, at its own expense, equipment to convert the Wavelength into a standard copper Gigabit Ethernet circuit.
5. CITY shall, at its own expense complete all splicing of ODOT-installed fiber laterals at the following intersections on 99W: Edy Road, Meinecke Road, and Sunset Boulevard.
6. CITY shall maintain the CITY Fiber and notify ODOT of any expected outages. Any unexpected outages shall be repaired CITY as soon as reasonably practicable.
7. CITY grants ODOT the right to enter onto CITY right of way for the performance of duties as set forth in this Agreement, provided that ODOT first receives all required permits.
8. CITY's Project Manager is Brad Crawford, IT Manager, City of Sherwood, 22560 SW Pine Street, Sherwood Oregon 97140, 503-625-4203, [crawfordb@ci.sherwood.or.us](mailto:crawfordb@ci.sherwood.or.us), or assigned designee upon individual's absence. CITY shall notify the other Party in writing of any contact information changes during the term of this Agreement.

## GENERAL PROVISIONS

1. This Agreement may be terminated by mutual written consent of both Parties.
2. Either Party may terminate this Agreement effective upon delivery of written notice to the other Party, or at such later date as may be established by the terminating Party, under any of the following conditions:
  - a. If the Party fails to perform any of the other provisions of this Agreement, in accordance with its terms, and after receipt of written notice from the terminating Party fails to correct such failures within ten (10) days or such longer period as the terminating Party may authorize.
  - b. If federal or state laws, regulations or guidelines are modified or interpreted in such a way that either the work under this Agreement is prohibited or the terminating Party is prohibited from paying for such work from the planned funding source.
3. Any termination of this Agreement shall not prejudice any rights or obligations accrued to the Parties prior to termination.
4. If any third party makes any claim or brings any action, suit or proceeding alleging a tort as now or hereafter defined in ORS 30.260 ("Third Party Claim") against ODOT or CITY with respect to which the other Party may have liability, the notified Party

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must promptly notify the other Party in writing of the Third Party Claim and deliver to the other Party a copy of the claim, process, and all legal pleadings with respect to the Third Party Claim. Each Party is entitled to participate in the defense of a Third Party Claim, and to defend a Third Party Claim with counsel of its own choosing. Receipt by a Party of the notice and copies required in this paragraph and meaningful opportunity for the Party to participate in the investigation, defense and settlement of the Third Party Claim with counsel of its own choosing are conditions precedent to that Party's liability with respect to the Third Party Claim.

5. With respect to a Third Party Claim for which ODOT is jointly liable with CITY (or would be if joined in the Third Party Claim), ODOT shall contribute to the amount of expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred and paid or payable by CITY in such proportion as is appropriate to reflect the relative fault of ODOT on the one hand and of CITY on the other hand in connection with the events which resulted in such expenses, judgments, fines or settlement amounts, as well as any other relevant equitable considerations. The relative fault of ODOT on the one hand and of CITY on the other hand shall be determined by reference to, among other things, the Parties' relative intent, knowledge, access to information and opportunity to correct or prevent the circumstances resulting in such expenses, judgments, fines or settlement amounts. ODOT's contribution amount in any instance is capped to the same extent it would have been capped under Oregon law, including the Oregon Tort Claims Act, ORS 30.260 to 30.300, if ODOT had sole liability in the proceeding.
6. With respect to a Third Party Claim for which CITY is jointly liable with ODOT (or would be if joined in the Third Party Claim), CITY shall contribute to the amount of expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred and paid or payable by ODOT in such proportion as is appropriate to reflect the relative fault of CITY on the one hand and of ODOT on the other hand in connection with the events which resulted in such expenses, judgments, fines or settlement amounts, as well as any other relevant equitable considerations. The relative fault of CITY on the one hand and of ODOT on the other hand shall be determined by reference to, among other things, the Parties' relative intent, knowledge, access to information and opportunity to correct or prevent the circumstances resulting in such expenses, judgments, fines or settlement amounts. CITY's contribution amount in any instance is capped to the same extent it would have been capped under Oregon law, including the Oregon Tort Claims Act, ORS 30.260 to 30.300, if it had sole liability in the proceeding.
7. The Parties shall attempt in good faith to resolve any dispute arising out of this Agreement. In addition, the Parties may agree to utilize a jointly selected mediator or arbitrator (for non-binding arbitration) to resolve the dispute short of litigation.
8. All employers, including both Parties, that employ subject workers who work under this Agreement in the State of Oregon shall comply with ORS 656.017 and provide the required Workers' compensation coverage unless such employers are exempt under ORS 656.126. Employers Liability insurance with coverage limits of not less

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than \$500,000 must be included. Both Parties shall ensure that each of its contractors complies with these requirements.

9. Both Parties shall perform the service under this Agreement as independent contractors and shall be exclusively responsible for all costs and expenses related to its employment of individuals to perform the work under this Agreement including, but not limited to, retirement contributions, workers compensation, unemployment taxes, and state and federal income tax withholdings.
10. Both Parties shall comply with all federal, state, and local laws, regulations, executive orders and ordinances applicable to the work under this Agreement, including without limitation, the provisions of ORS 279C.505, 279C.515, 279C.520, 279C.530, and 279B.270, incorporated herein by reference and made part hereof. Without limiting the generality of the foregoing, both Parties expressly agree to comply with (i) Title VI of Civil Rights Act of 1964; (ii) Section V of the Rehabilitation Act of 1973; (iii) The Americans with Disabilities Act of 1990 and ORS 659A.142; (iv) all regulations and administrative rules established pursuant to the foregoing laws; and (v) all other applicable requirements of federal and state civil rights and rehabilitation statutes, rules and regulations.
11. The Parties acknowledge and agree that ODOT, the Oregon Secretary of State's Office, the federal government, and their duly authorized representatives shall have access to the books, documents, papers, and records of CITY which are directly pertinent to the specific Agreement for the purpose of making audit, examination, excerpts, and transcripts for a period of six (6) years after final payment (or completion of Project -- if applicable.) Copies of applicable records shall be made available upon request. Payment for costs of copies is reimbursable by ODOT.
12. This Agreement may be executed in several counterparts (facsimile or otherwise) all of which when taken together shall constitute one agreement binding on all Parties, notwithstanding that all Parties are not signatories to the same counterpart. Each copy of this Agreement so executed shall constitute and original.
13. This Agreement and attached exhibits constitute the entire agreement between the Parties on the subject matter hereof. There are no understandings, agreements, or representations, oral or written, not specified herein regarding this Agreement. No waiver, consent, modification or change of terms of this Agreement shall bind either Party unless in writing and signed by both Parties and all necessary approvals have been obtained. 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 either Party to enforce any provision of this Agreement shall not constitute a waiver by that Party of that or any other provision.

**THE PARTIES**, by execution of this Agreement, hereby acknowledge that their signing representatives have read this Agreement, understand it, and agree to be bound by its terms and conditions.

**The CITY OF SHERWOOD**, by and through its elected officials

By \_\_\_\_\_

Date \_\_\_\_\_

By \_\_\_\_\_

Date \_\_\_\_\_

**APPROVED AS TO LEGAL SUFFICIENCY**

By \_\_\_\_\_  
Counsel

Date \_\_\_\_\_

**CITY Contact:**

Brad Crawford, IT Manager  
City of Sherwood  
22560 SW Pine St.  
Sherwood, OR 97140  
503-625-4203  
crawfordb@ci.sherwood.or.us

**STATE OF OREGON**, by and through its Department of Transportation

By \_\_\_\_\_

State Maintenance and Operations Engineer

Date \_\_\_\_\_

**APPROVAL RECOMMENDED**

By \_\_\_\_\_

Date \_\_\_\_\_

**REVIEWED FOR ODOT BY**

By Ethan R. Hasenstein, Assistant Attorney General by e-mail dated September 14<sup>th</sup>, 2012

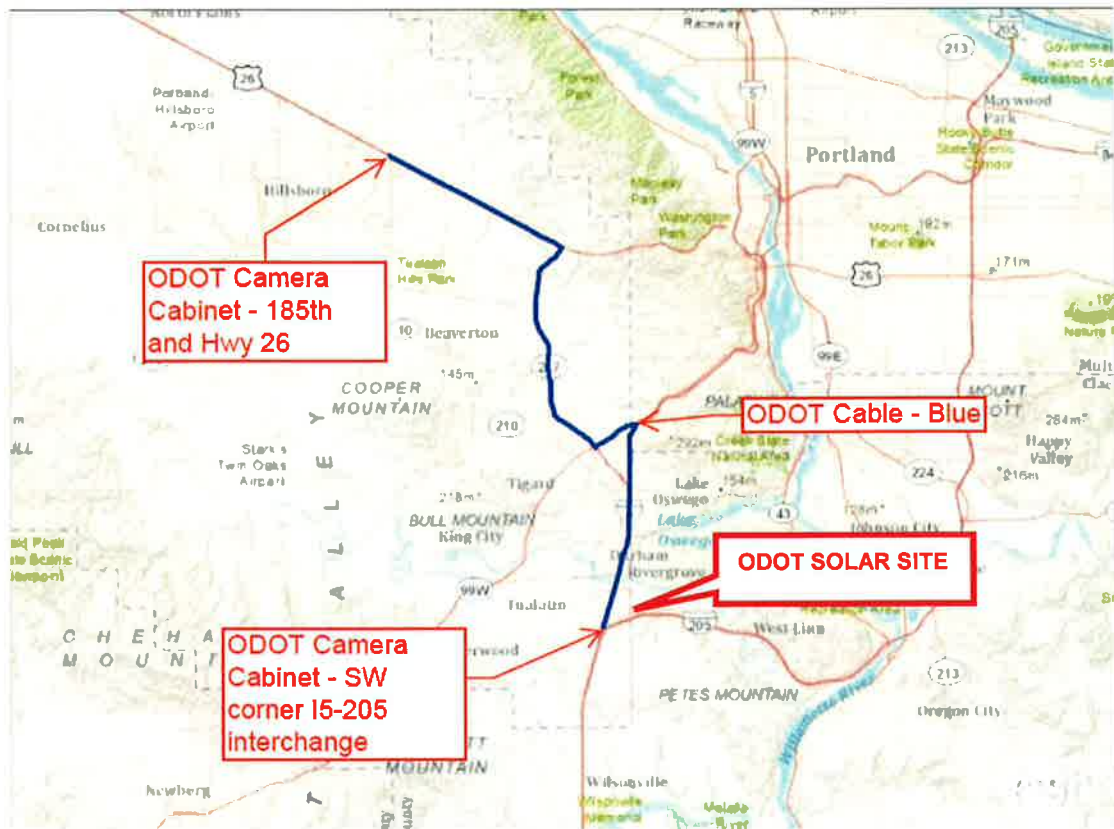
**ODOT Contact:**

Doug Spencer, ITS Standards Engineer  
ODOT – Office of Statewide Maintenance  
644 A St.  
Springfield, OR 97477  
503-856-6528  
doug.l.spencer@odot.state.or.us





### EXHIBIT A – Project Location Map 2



MRLC, Oregon DOT, Oregon GEO, State of Oregon, TomTom, U.S. Forest Service, AAFC, NPS, NRCAN, Esri, DeLorme, NAVTEQ, USGS, USDA, EPA, NGA