



## RESOLUTION 2022-056

### AUTHORIZING THE CITY MANAGER TO SIGN A SERVICE ORDER WITH 1547 CSR – PITTOCK BLOCK LLC FOR DATA CENTER SPACE AND CONNECTIVITY

**WHEREAS**, Sherwood Broadband has co-located its equipment and the equipment of its customers and partners in the Pittock building located at 921 SW Washington St. in Portland, Oregon; and

**WHEREAS**, the owners of the building wish to renew the Right of Entry and License Agreement for the space, power and connectivity Sherwood Broadband utilizes; and

**WHEREAS**, the cost of this service is \$126,000 annually and the term of this new agreement is for five years; and

**WHEREAS**, Sherwood Broadband customers and partners who utilize the connectivity provided at the Pittock building will pay for most of the service costs that is incurred by Sherwood Broadband.

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

**Section 1.** The City Manager is hereby authorized to execute a Service Order and First Amendment to the Right of Entry and License Agreement with 1547 CSR – Pittock Block LLC in a form substantially similar to the attached Exhibit A.

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

**Duly passed by the City Council this 19<sup>th</sup> day of July 2022.**

  
\_\_\_\_\_  
Keith Mays, Mayor

Attest:

  
\_\_\_\_\_  
Sylvia Murphy, MMC, City Recorder

## **FIRST AMENDMENT TO RIGHT OF ENTRY AND LICENSE AGREEMENT**

This Amendment to Right of Entry and License Agreement (this "Amendment") is made as of June 15th, 2022 (the "Effective Date"), by and between 1547 CSR – PITTOCK BLOCK LLC, an Oregon limited liability company ("Licensor") and CITY OF SHERWOOD ("Licensee").

### **RECITALS**

A. Licensor and Licensee entered into that certain Right of Entry and License Agreement dated as of June 12, 2014, whereby Licensor granted Licensee a non-exclusive license to use and occupy the License Area in that certain building owned by Licensor and commonly known as Pittock Block at 921 SW Washington, Portland Oregon 97205 (the "Building"), for the purpose of providing communications services. All capitalized terms used herein and not otherwise defined in this Amendment shall have the same meanings given to them in the License Agreement.

B. Licensor and Licensee desire to, among other things, modify the manner in which the License Agreement provides for services by Licensor and payments by Licensee, in accordance with the provisions of this Amendment.

### **AGREEMENT**

In consideration of the mutual covenants and conditions contained herein and for other good and valuable consideration, Licensor and Licensee agree as follows:

#### **1. Amendment of License Agreement.**

A. Service Orders. After the Effective Date, "Service Orders" and/or "CCF Standards, Guidelines and Costs", as the case may be, under the License Agreement, as relates to the manner in which services are provided by Licensor to Licensee and/or in which payments are made by Licensee to Licensor for such services, shall be solely determined by the provisions of this Section. Licensor shall offer certain services to Licensee ("Services"), including, but not limited to, use of the License Area and providing tie cables and cross connects from the License Area to Licensor's central network interconnection point within the Building. Licensor shall offer Services to Licensee pursuant to written service orders, which shall itemize available Services and provide any terms, conditions, pricing, charges, costs, and fees for such Services ("Service Orders"). Upon reasonable written notice given to Licensee, Licensor may change any of the terms of the then-prevailing Service Order, including pricing for Services, as dictated by prevailing market rates or other economic factors, in Licensor's reasonable discretion. Licensee shall purchase Services from Licensor pursuant to the terms of the then-prevailing Service Orders. Payment for Services (each a "Services Payment") shall be made in advance on or before the first day of each calendar month during the Term. After such Services Payment has been made by Licensee, Licensor shall provide such purchased Services to Licensee. Services shall be cancelled pursuant to written cancellation orders ("Cancellation Orders"), which shall provide a requested stop date for Services of not less than thirty (30) days from the date of transmittal. Any Service Order or Cancellation Order shall be transmitted to Licensor by e-mail at [support@pittock.com](mailto:support@pittock.com). In the event of any conflict between the terms of the License Agreement and the terms of this Amendment as relates to "Service Orders" and/or "CCF Standards, Guidelines and Costs", including any Dollar amounts stated in the License Agreement, the terms of this Amendment shall control.

B. Non-Recurring Fee and Monthly Payments. After the Effective Date, any "non-recurring fee" and/or "Monthly Payment", as the case may be, under the License Agreement, as relates to non-recurring payments or monthly recurring payments by Licensee to Licensor of fixed Dollar amounts, shall be solely determined by Service Orders pursuant to the provisions of this Section and Section 1(A) of this Amendment. Any such non-recurring fee or Monthly Payment, as applicable, shall be itemized in the then-prevailing Service Order. Payment of any non-recurring fee or Monthly Payment, as set forth

in the then-prevailing Service Order, shall be deemed a Services Payment and made in the same manner as other Services Payments. In the event of any conflict between the terms of the License Agreement and the terms of this Amendment as relates to "non-recurring fee" or "Monthly Payment", including any Dollar amounts stated in the License Agreement, the terms of this Amendment shall control.

C. **Interest.** Should Licensee fail to pay any Services Payment, including any non-recurring fee or Monthly Payment, within ten (10) days of when the same is due and payable, any such unpaid amounts shall bear interest at the rate of eighteen percent (18%) per annum, or otherwise the highest rate allowed by law, beginning when the same was due until fully repaid.

D. **Term.** Upon the Effective Date, the term of the License Agreement ("Term") shall automatically renew for a five (5) year period, which Term shall commence on the Effective Date, and expire on the date that is five (5) years after the Effective Date ("Expiration Date"). Thereafter, the term shall automatically renew, as of the Expiration Date of each prior Term, for additional fixed periods of one (1) year, unless either party provides written notice to the other that the Term shall not so renew, which notice shall be given no less than ninety (90) days prior to the then-scheduled Expiration Date. Upon the expiration or termination of the License Agreement, (i) the License Agreement shall terminate and be of no further force or effect, (ii) Licensor shall have the absolute right to immediately cease any and all Services to Licensee, and (iii) Licensee shall have no right to use or enter the Building for any purpose whatsoever.

E. **Surrender of License Area; Holdovers.** Licensee, upon the expiration or termination of the License Agreement, agrees to peaceably surrender the License Area to Licensor, in broom-clean condition and in good repair, ordinary use and wear excepted. Licensee agrees that if Licensee fails to surrender possession of the License Area as required upon the date of expiration or termination of the License Agreement, then Licensee shall pay to Licensor, as liquidated damages, a sum equal to two hundred percent (200%) of the Monthly Payment for all the time Licensee shall so retain possession of the License Area or any part thereof (the "Holdover Fee"); *provided, however,* that Licensee shall be deemed a holdover licensee and the exercise of Licensor's rights under this Section shall not be interpreted as a grant of permission to Licensee to continue in possession. Licensor shall not be obligated to provide Services to Licensee in the event of a holdover. The obligations under this Section shall survive the expiration or termination of the License Agreement. Licensor's acceptance of the Holdover Fee shall not preclude Licensor from exercising any of its available remedies, without liability for damages, including Licensor's right to enter upon and take possession of the License Area and remove any persons or property by self-help means in a lawful and peaceable manner. Licensee further agrees to waive any statutory right to hold over to the fullest extent permitted by the law.

## **2. General Provisions.**

A. **Full Force and Effect; Conflict.** Except as amended by this Amendment, the License Agreement as modified herein remains in full force and effect and is hereby ratified by Licensor and Licensee. In the event of any conflict between the License Agreement and this Amendment, the terms and conditions of this Amendment shall control.

B. **Successors and Assigns.** This Amendment shall be binding upon and inure to the benefit of the parties hereto and their heirs, personal representatives, successors and assigns.

C. **Entire Agreement.** The License Agreement, as amended by this Amendment, contains the entire agreement of Licensor and Licensee with respect to the subject matter hereof, and may not be amended or modified except by an instrument executed in writing by Licensor and Licensee.

D. **Counterparts.** This Amendment may be executed in any number of counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same

instrument, and may be executed by facsimile and/or .pdf signatures which shall be binding as originals on the parties hereto.

E. Attorneys' Fees. In the event of litigation arising out of or in connection with this Amendment, the prevailing party shall be awarded reasonable attorneys' fees, costs and expenses.

F. Governing Law. This Amendment shall be governed by and construed in accordance with the laws of the State of Oregon.

*[Signature Page Follows.]*

IN WITNESS WHEREOF, Licensor and Licensee have executed this Amendment as of the date first above written.

**Licensor:** 1547 CSR – PITTOCK BLOCK LLC, an Oregon limited liability company

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

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

**Licensee:** \_\_\_\_\_, an  
\_\_\_\_\_

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

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



**Account Name:** City of Sherwood  
**SO #:** Q-02171  
**SO Date:** 6/15/2022  
**Initial Contract Term:** 5 Years  
**Building Location:** Portland, OR USA

**1547 CSR – Pittock Block, LLC  
 Service Order**

**Account Manager** Kevin Neely  
**Phone** (503) 226-6777  
**Address** 921 SW Washington St, Portland  
 Portland OR 97205

**Contact Name** Brad Crawford  
**Contact Email** crawfordb@sherwoodoregon.gov  
**Contact Phone** +1 503-625-5522  
**Bill To** City of Sherwood  
 22560 SW Pine Street  
 Sherwood, OR 97140  
 United States

Monthly Recurring Charges

QTY	DESCRIPTION	PRODUCT DESCRIPTION	SALES PRICE
1.00	MRC - 30 AMP 208v Primary	MRC - 30 AMP 208v Single Primary Drop	USD 1,000.00
50.00	MRC - Cage SF	MRC - Cage SF - Per Square Foot	USD 700.00
4.00	MRC - 6-Pack Fiber Cross Connects	MRC - 6-Pack Fiber Cross Connects - (6) Fiber Pair Handoff	USD 3,600.00
4.00	MRC - 6-Pack Fiber Cross Connects	MRC - 6-Pack Fiber Cross Connects - (6) Fiber Pair Handoff	USD 4,500.00
2.00	MRC - Ethernet Cross Connect	MRC - Ethernet Cross Connect - (1) RJ45 Handoff	USD 200.00
<b>Monthly Recurring Charges TOTAL:</b>			<b>USD 10,000.00</b>

<b>DISCOUNT:</b> USD 650.00
<b>TOTAL:</b> USD 10,000.00

Local State & Local Sales Tax will be added to the totals.

**Notes:**

This service order is valid 30 days from the service order date.  
 The 50 square feet of assigned space can be caged accordingly at the licensor's discretion provided it does not disrupt the licensee's current footprint.  
 The (4) 6 packs priced at \$1125 monthly can be cancelled with a 30 day's notice during the term.

**Terms & Conditions:**

This Service Order shall be binding as of the latter dated signature below. The term of this Service Order, as set forth above in the "Service Details" section (the term), shall commence on the date the Customer's ordered services are available for use by the Customer (the "Service Commencement Date").

This Service Order is made subject to the terms and conditions of the Right of Entry and License agreement between Customer and 1547 CSR – Pittock Block, LLC. Notwithstanding anything

to the contrary in the agreement between the parties, during the Term, all service fees identified above shall increase on each 12-month anniversary of the Service Commencement Date in an amount of 5 percent. Such increase shall be automatically invoiced to Customer upon each 12-month anniversary of the Service Commencement Date.

**City of Sherwood**

**Signature:** \_\_\_\_\_ **Effective Date:** \_\_\_\_/\_\_\_\_/\_\_\_\_  
**Name (Print):** \_\_\_\_\_ **Title:** \_\_\_\_\_

**1547 CSR – Pittock  
Block, LLC**

**Signature:** \_\_\_\_\_ **Effective Date:** \_\_\_\_/\_\_\_\_/\_\_\_\_  
**Name (Print):** \_\_\_\_\_ **Title:** \_\_\_\_\_

**THANK YOU FOR YOUR BUSINESS!**

Internal Use Only:

RF: false

Contract Supersedes Existing Contract: true

Service Order Approval:

\_\_\_\_\_