



RESOLUTION 2018-043

AUTHORIZING THE CITY MANAGER TO SIGN AN IGA WITH CLACKAMAS COUNTY FOR SHARING DATA NETWORK RESOURCES

WHEREAS, the City of Sherwood's broadband utility, Sherwood Broadband has data network resources within the Portland Metro area; and

WHEREAS, Sherwood Broadband strives to provide redundant connections across its data network where it's financially feasible; and

WHEREAS, Clackamas County has significant data network resources that can provide additional protections and redundancies to the Sherwood Broadband network; and

WHEREAS, Sherwood Broadband can provide similar network redundancies that are needed by Clackamas County; and

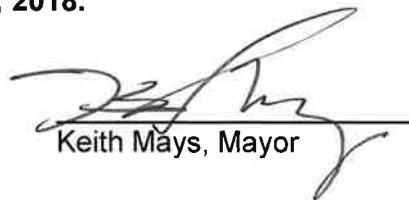
WHEREAS, Sherwood Broadband and Clackamas County have developed an intergovernmental agreement (IGA) to exchange network resources to help achieve the above goals, and Clackamas County has agreed to contribute \$5,000 toward the approximately \$10,000 in onetime costs associated with this IGA.

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


Section 1. The City Manager is hereby authorized to execute the Intergovernmental Agreement (IGA) with Clackamas County for sharing of data network resources 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 15 day of May, 2018.


Keith Mays, Mayor

Attest:


Sylvia Murphy, MMC, City Recorder

INTERGOVERNMENTAL AGREEMENT ON
SHARING DATA NETWORK RESOURCES
BETWEEN THE CITY OF SHERWOOD AND CLACKAMAS COUNTY

This Intergovernmental Agreement Regarding Sharing Data Network Resources (this "Agreement") is entered into by and between the City of Sherwood, a municipal corporation of the State of Oregon (the "City"), and Clackamas County, a political subdivision of the State of Oregon (the "County") (collectively, the "Parties"), pursuant to ORS 190.003 to 190.110, which allows units of government to enter into agreements for the performance of any or all functions and activities which such units have authority to perform.

RECITALS

WHEREAS, the City and the County have found many areas of mutual benefit in sharing data network resources; and

WHEREAS, intergovernmental cooperation between the City and County in data transport and the provision of access to fiber resources benefit the citizens and taxpayers of the City and County; and

WHEREAS, the Parties desire to formalize this practice of cooperation through an Intergovernmental Agreement;

NOW, THEREFORE, the City and County agree as follows:

AGREEMENT

ARTICLE 1

Ownership and Use Rights.

- 1.1. City Use Rights. County hereby grants City exclusive and unrestricted use of two (2) fiber strands on the County fiber network in the locations described and depicted in Exhibit A-1. County grants to City, for the Term (as defined in Section 3.1), the nonexclusive right to use the tangible and intangible property wherein the Cable is located, which is required for the use thereof (collectively, the "County Associated Property"), including but not limited to: (1) the associated conduit; and (2) City's rights in all Underlying Rights for the fiber strands.

- 1.2. County Use Rights. City hereby grants County exclusive and unrestricted use of 6U rack space (approximately 10.5 inches of rack space height) on City-leased rack space in the Pittock Building, located at 921 SW Washington St., Portland, Oregon ("Pittock"), and 2U rack space (approximately 3.5 inches of rack space height) on City-leased rack space at EdgeConnex data center, located at 23245 NW Evergreen Parkway Hillsboro, OR 97124 ("EdgeConnex"). City also grants County the exclusive use of a 10 gigabit Dense Wavelength Division Multiplexing ("DWDM")

between the Pittock and EdgeConnex. The 10 gigabit DWDM Wavelength route on the City network is generally described and depicted in Exhibit A-2. City grants to County, for the Term, the nonexclusive right to use the tangible and intangible property wherein the DWDM Wavelength and rack space are located, which is required for the use thereof (collectively, the "City Associated Property"), including but not limited to: (1) the associated conduit; and (2) County's rights in all Underlying Rights for the DWDM Wavelength and rack space.

- 1.3. Control of Network. City and County shall each have full and complete control and responsibility for determining any network and service configuration or designs, routing configurations, regrooming, rearrangement or consolidation of channels or circuits and all related functions with regard to the use of their respective fiber strands. City and County shall not control the others' fiber strands nor be responsible for any of the above for the other party. For purposes of this section and determining control of the fiber strands, the fiber strands a party has use of under this Agreement shall be considered to be that Party's fiber strands.

- 1.4. No Electronics. The Parties acknowledge and agree that they are responsible for their own optronics or electronics or optical or electrical equipment or other facilities. Neither Party is responsible for performing any work other than as specified in this Agreement.

- 1.5. Costs. It is anticipated that costs of approximately ten-thousand dollars (\$10,000.00) will be incurred in connection with the tie cable installation at EdgeConnex related to the items described above. The Parties will each be responsible for one half (1/2) of such actual cost incurred, except that County's contribution will not exceed \$5,000. It is further anticipated that cross-connect charges at the Pittock will be incurred in relation to the items described above. County will be solely responsible for any such costs incurred.

ARTICLE 2 Consideration

- 2.1 The items described in Section 1 above will be provided at no cash cost. Neither party can charge any fees to the other in connection with the items provided under Section 1 of this Agreement. This includes, but is not limited to, franchise fees, utility fees, usage fees, right of way fees, or other fees that can be levied by one government entity onto another.

- 2.2 The consideration for this Agreement is the exchange of property rights, as described in Section 1, between the Parties.

ARTICLE 3

Term, Amendment, Assignment, and Severability

- 3.1 The term of this Agreement (the "Term") shall be for ten (10) years beginning upon signatures by both parties.
- 3.2 Termination (prior to the expiration of the Term) or amendment of this Agreement, or parts thereof, requires the written consent of the governing bodies of both Parties, except that Article 1 may be amended by written consent of the City's City Manager and the County's County Administrator.
- 3.3 Either party may transfer, convey, or assign its rights and responsibilities under this Agreement without the consent of the other party provided that the assignee will execute an agreement covenanting and agreeing that it will fully perform, without change or additional costs, the responsibilities of the assignor.
- 3.4 If any part of the Agreement is invalidated by court of competent jurisdiction, all remaining parts of the Agreement shall be severed from the invalid parts and shall remain in full force and effect.

ARTICLE 4

Maintenance and Work on the Fiber and Infrastructure

- 4.1 The City will be responsible for maintenance of the fiber and infrastructure that is either owned or leased by the City. If the fiber or infrastructure is damaged, or it requires relocation or replacement, City will be responsible for those costs, unless the two parties, County and City, can mutually arrange a different funding agreement.
- 4.2 County will be responsible for maintenance of the fiber and infrastructure either owned or leased by the County. If the fiber or infrastructure is damaged, or it requires relocation or replacement, County will be responsible for those costs, unless the two parties, County and City, can mutually arrange a different funding agreement.
- 4.3 Maintenance, repairs or relocation will be done in a timely fashion in accordance with industry standards. Neither party is liable for cost or penalty to the other. Downtime is to be limited as much as practical and in accordance with communication industry practice.
- 4.4 For purposes of this Section, the cable and infrastructure a party has use of under this Agreement shall be considered to be leased by that party.

ARTICLE 5
Underlying Rights

5.1 Underlying Rights. Each party has obtained certain rights of way and building access rights for construction and operation of their respective City Network and County Network (the "Underlying Rights") as depicted in Exhibit A-1. This Agreement is subject to the terms and limitations of the Underlying Rights, and subject to the terms under which the right of way and other property interests are owned or held by the grantor of the Underlying Rights, including, but not limited to, covenants, conditions, restrictions, easements, reversionary interests, bonds, mortgages and indentures, and other matters, whether or not of record, and to the rights of tenants and licensees in possession. Nothing herein shall be construed as to be a representation, warranty or covenant of either party's right, title or interest with respect to the right of ways or the Underlying Rights, all of which are disclaimed, except that City represents to the County that the use of the City's leased space in the Pittock is sublicensable to the County under the terms of the City's lease agreement.

5.2 County's Obligations. County agrees to use the fiber and infrastructure for which it has acquired usage rights under this Agreement only in a manner consistent with the Underlying Rights and all applicable laws, and agrees that its rights shall in all respects be subject to the terms and conditions of the Underlying Rights. County agrees not to cause or allow to be caused any default under the Underlying Rights.

5.3 City's Obligations. The City agrees to use the fiber and infrastructure for which it has acquired usage rights under this Agreement only in a manner consistent with the Underlying Rights and all applicable laws, and agrees that its rights shall in all respects be subject to the terms and conditions of the Underlying Rights. The City agrees not to cause or allow to be caused any default under the Underlying Rights.

ARTICLE 6
Use of the Fibers

County and City each shall not use the fiber and infrastructure for which they have acquired usage rights under this Agreement, in a way that interferes in any way with or adversely affects the use of the fibers or infrastructure of any other person using the City Network or the County Network. The Parties acknowledge that the City Network and the County Network may include other participants, including City or the County and other owners and users of telecommunication systems.

ARTICLE 7
Notices

All notices and other communications required or permitted under this Agreement shall be in writing and shall be given by United States first class mail, postage prepaid, registered or certified, return receipt requested, or by hand delivery (including by means of a professional messenger service or overnight mail) addressed as follows:

All notices shall be given to City at:

City of Sherwood
22560 SW Pine Street
Sherwood, Oregon 97140
Attention: Brad Crawford

All notices shall be given to County at:

Clackamas County
Chief Information Officer
121 Library Court
Oregon City, OR 97045
Telephone 503 655-8525

With a copy to

Clackamas County
Broadband Program Manager
121 Library Court
Oregon City, OR 97045
Telephone 503 77-6663

In addition, The Parties may provide notice of the availability or interruption of the services or a planned maintenance, by electronic delivery at all of the following Internet addresses:

Electronic Notice address for County: ddexter@clackamas.us;

Electronic Notice address for City: crawfordb@sherwoodoregon.gov

In the case of an emergency, either Party may notify the other Party either through the Internet addresses set forth above, or at the following telephone numbers:

Telephone Number for County: 503 742-4219 24/7 call service and

Telephone Number for City: (503) 625-4203

Any such notice or other communication shall be deemed to be effective when actually received or refused. Either Party may by similar notice given change the address to which future notices or other communications shall be sent.

ARTICLE 8
Indemnification

To the extent permitted by the Oregon Tort Claims Act, each party shall defend, indemnify, and hold harmless the other party and its elected officials, officers, agents, volunteers, and employees against any and all liability, settlements, loss, damage, costs, and expenses arising from or in connection with any action, suit, demand, or claim resulting or allegedly resulting from the indemnifying party's and/or the indemnifying party's elected officials', officers', agents', volunteers', and employees' acts, omissions, activities, or services in the course of performing this Agreement. A Party's activities are deemed to include those of its subcontractors. This section will survive the termination or revocation of this Agreement, regardless of cause.

IN WITNESS HEREOF, the Parties hereto agree to the foregoing:

<p>CITY OF SHERWOOD</p> <p>By: _____ As Its:</p> <p>ATTEST:</p> <p>By: _____ City Recorder</p>	<p>CLACKAMAS COUNTY</p> <p>By: _____ As Its: Chair, Board of Commissioners</p> <p>ATTEST:</p> <p>By: _____ Recording Secretary</p>
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Exhibit A-1.
Dark fiber path for the City of Sherwood.

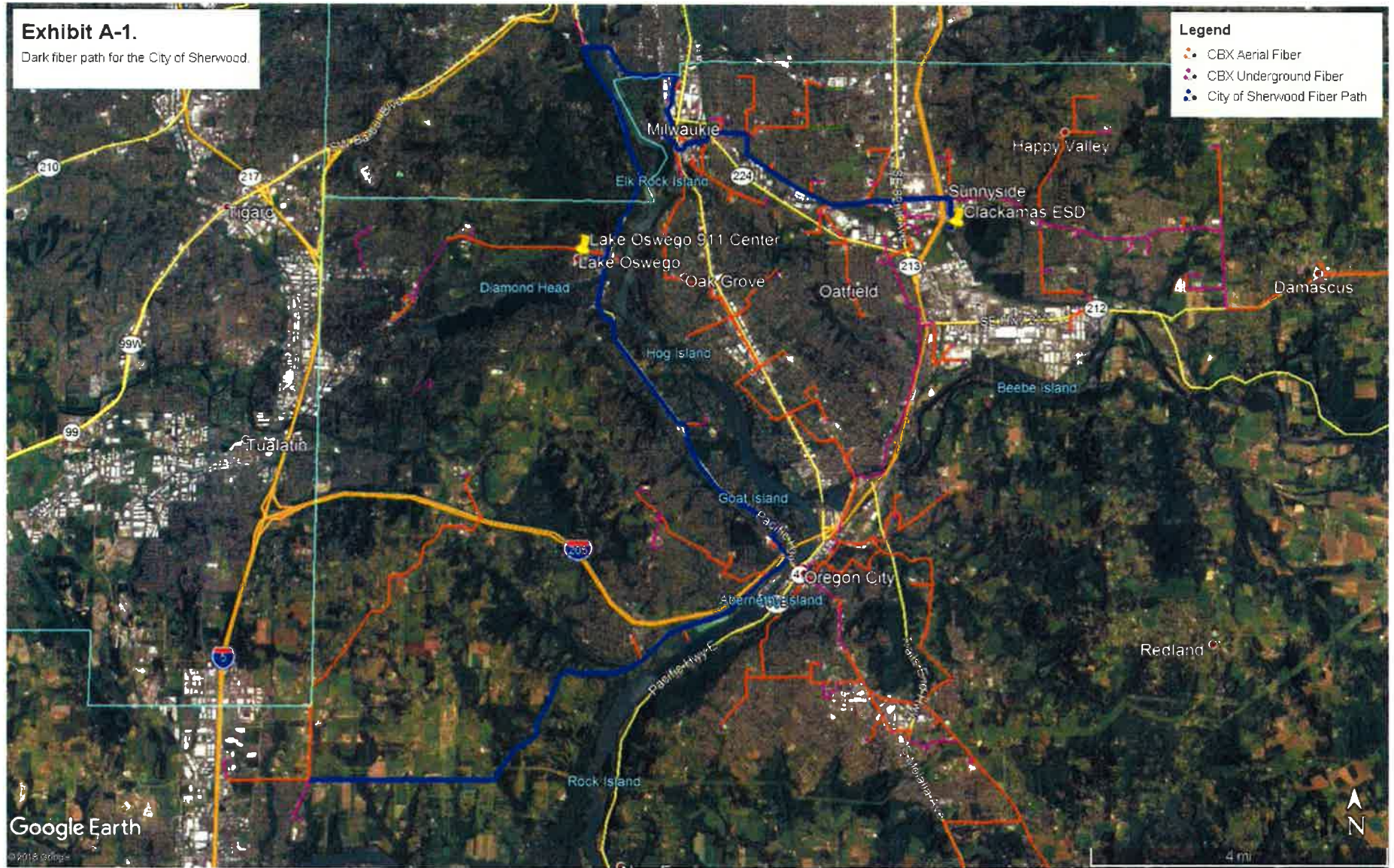


Exhibit A-2

WDM from Pittock to Edgeconnex

Legend

 WDM Path (Not Exact)

Edgeconnex

Pittock

Google Earth

Resolution: 2018-043 Exhibit A
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