

Council Business Meeting

July 3, 2018

Title: Approval of Radio Maintenance Agreement with Day Wireless
From: Tighe O'Meara Police Chief
Mike D'Orazi Fire Chief
Tighe.omeara@ashland.or.us
Michael.dorazi@ashland.or.us

Summary:

Staff is seeking approval of a maintenance agreement with Day Wireless for our portable and mobile radios for the police department, and a similar agreement for mobile radios for the fire department.

Actions, Options, or Potential Motions:

I move that Council approve a maintenance agreement with Day Wireless for maintenance of the Ashland Police Department's portable and mobile radios in the amount of \$8,649 as well as a similar agreement between AFR and Day Wireless for \$2,496.

Staff Recommendation:

Staff recommends that Council approve both maintenance agreements.

Resource Requirements:

This maintenance agreement costs APD \$8,649 and AFR \$2,496 and these funds are budgeted for in the approved FY 2018 budget.

Policies, Plans and Goals Supported:

N/A

Background and Additional Information:

Both the police department and fire department operate radio systems that utilize both portable and mobile radios. These radios serve as a critical link between members of the departments and dispatch. These radio systems serve as the communications backbone of the departments' daily and emergency operations and it is imperative that they be maintained. Day Wireless has been maintaining these radio systems, as well as the county's overall system for some time. Day Wireless has the necessary experience and expertise to continue to maintain this equipment.

Attachments:

Maintenance Agreement with Day Wireless for police
Maintenance Agreement with Day Wireless for fire

**Addendum to
DAY WIRELESS SYSTEMS MAINTENANCE AGREEMENT (the “Agreement”)**

between

**DAY WIRELESS SYSTEMS(“DWS”)
and
THE CITY OF ASHLAND (“USER”)**

To the extent this Addendum and the Terms and Conditions of the Agreement conflict, this Addendum shall control. This Addendum amends the Terms and Conditions of the Agreement as follows:

1. Add the following new Section 21 to the Agreement as follows:

21. The following laws of the State of Oregon are hereby incorporated by reference into this Agreement: ORS 279B.220, ORS 279B.230, and ORS 279B.235.

2. Add the following new Section 22 to the Agreement as follows:

22. General Liability Insurance. DWS shall obtain and keep in effect at its sole cost during the term of this Agreement commercial general liability insurance covering bodily injury and property damage. This insurance shall also include contractual liability coverage under this Agreement. The combined single limit per occurrence shall not be less than two million U. S. dollars (\$2,000,000). An endorsement to this insurance shall name the City of Ashland, its officials, officers, agents and employees as additional insureds to the extent of DWS’ negligence.

3. Add the following new Section 23 to the Agreement as follows:

23. Oregon Tax Law. DWS’ compliance with tax law:

(1) DWS represents and warrants to the USER that:

DWS shall, throughout the term of this Agreement, including any extensions hereof, comply with:

- (i) All tax laws of the State of Oregon, including but not limited to ORS 305.620 and ORS Chapters 316, 317, and 318;
- (ii) Any tax provisions imposed by a political subdivision of the State of Oregon applicable to DWS; and
- (iii) Any rules, regulations, charter provisions, or ordinances that implement or enforce any of the foregoing tax laws or provisions.

DWS, for a period of no fewer than six (6) calendar years preceding the Agreement Date, has faithfully complied with:

- (i) All tax laws of the State of Oregon, including but not limited to ORS 305.620 and ORS Chapters 316, 317, and 318;
 - (ii) Any tax provisions imposed by a political subdivision of the State of Oregon applicable to DWS; and
 - (iii) Any rules, regulations, charter provisions, or ordinances that implement or enforce any of the foregoing tax laws or provisions.
- (2) DWS' failure to comply with the tax laws of the State of Oregon and all applicable tax laws of any political subdivision of the State of Oregon shall constitute a material breach of this Agreement.

Except as specifically modified by this Addendum, the Agreement shall remain in full force and effect.

IN WITNESS WHEREOF the parties have caused this Addendum to be signed in their respective names by their duly authorized representative as of the dates set forth below.

THE CITY OF ASHLAND, OREGON

DAY WIRELESS SYSTEMS

By: _____

By: Calvin Emig
 (must be Officer of the Company)

Printed Name: Tighe O'Meara

Printed Name: Calvin Emig

Title: Police Chief

Title: Manager

Date: _____

Date: 6-4-18

AUTHORIZED SIGNATURE

AUTHORIZED SIGNATURE

NOTE: Make sure the second page is initialed by the customer.

DAY WIRELESS SYSTEMS

MAINTENANCE AGREEMENT

TERMS & CONDITIONS

1. **DEFINITIONS.** "DWS" shall mean Day Wireless Systems. "Licensee" shall mean and apply to the FCC Licensee, or the User, or the Purchaser of the equipment to be maintained by the terms of this agreement.
2. **PERFORMANCE OF MAINTENANCE.** DWS agrees to provide maintenance (as defined below) for the Licensee of the equipment described on the previous page of this agreement beginning and ending on the dates indicated in consideration of Licensee's payment of the monthly maintenance charges. Maintenance shall include the labor and parts required to repair equipment, which has become defective through normal wear and usage.
3. **MAINTENANCE STANDARDS.**
 - a. The equipment will be maintained by DWS in accordance with these standards: (I) Motorola parts of equal quality will be used; (II) oil, water, dust and foreign substances will be removed from the equipment; (III) the equipment will not be subject to mechanical abuse; (IV) the equipment will be maintained at the levels necessary to provide the required communication; (V) routine maintenance procedures will be followed; and (VI) all maintenance work will be done by qualified technicians. The equipment will be inspected and adjusted periodically and as often as required. Maintenance service does not insure uninterrupted operation of the equipment.
 - b. EXCEPT FOR THE FOREGOING, DWS MAKES NO OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.
4. **TIME AND PLACE OF MAINTENANCE WORK.** Maintenance work on the base station and other fixed equipment shall be performed at the location of the equipment, and the Licensee shall furnish heat, light, and power at the locations. Mobile units and removable equipment shall be delivered by the Licensee to the place of service indicated on the previous page of this agreement.
5. **EXCLUSIONS.**
 - a. This agreement does not include maintenance of any transmission line, antennas, tower, or tower lighting, unless such work is described on the previous page of this agreement, such maintenance may be furnished upon request at mileage, materials, and labor rates prevailing at the time of each call.
 - b. Maintenance does not include the repair or replacement of equipment which has otherwise become defective, including, but not limited to, damage caused by accidents, physical abuse or misuse of the equipment, acts of God, fires, and does not include extensive maintenance or replacement of equipment due to interference, intermodulation, or other degrading signals causing poor service that the equipment is not designed to reject.
6. **PAYMENT.**
 - a. DWS shall invoice Licensee on a monthly, quarterly, semi annual or annual basis for all amounts due under this agreement. Licensee agrees that payment shall be made in ten (10) days after the date of the invoice.
 - b. Each invoice shall be due and payable whether or not the equipment is operating, and DWS may terminate this agreement by giving Licensee ten (10) days notice by certified mail if the Licensee defaults in its payment to DWS.
7. **FCC RECORDS.** Application and statements of fact when required by the Federal Communications Commission must be subscribed and sworn to by the Licensee, and the Licensee is responsible for meeting FCC requirements. However, DWS will provide the Licensee with forms, advice, and technical assistance, including frequency, modulation and power measurements, to aid in meeting those requirements.
8. **INTERRUPTION OF SERVICE.** The Licensee shall notify DWS in the event of the failure or malfunction of the unit. If DWS fails to repair the unit within a reasonable time, the Licensee shall notify the Headquarters Office in writing. After said notice from the Licensee to the Headquarters Office, DWS shall be liable for any interruption or interference affecting the use of or transmission through the equipment maintained to the extent of a pro rate allowance based on the monthly maintenance fee for the time such interruption or interference is attributable to the fault of DWS.
9. **FORCE MAJEURE.** DWS shall not be responsible for any damages, delay in performance or failure to perform under this Agreement if such damage, delay in performance, or failure to perform is caused by any acts or omissions of Licensee, fire, strike, or other labor disputes, embargo, government regulations or requirements (legislative, judicial, military or otherwise), power failure, electrical power surges or current fluctuations, lightning strike, flood war, water, the elements, or other forces of nature, delays or failures of transportation, equipment shortages, suppliers' failures or other causes beyond its reasonable control, whether or not similar to the foregoing.
10. **AUTOMATIC RENEWAL.** After the "Date Maintenance Ends" indicated on the previous page of this agreement, this agreement shall continue for successive additional periods of 1 month, provided that either DWS or the Licensee may terminate this agreement on the "Date Maintenance Ends" or thereafter upon 30 days written notice to the other party sent by certified mail to the address indicated herein.
11. **WAIVER.** Failure or delay on the part of DWS to exercise any right, power, or privilege hereunder shall not operate as a waiver thereof.
12. **PRIOR NEGOTIATIONS.** This contract constitutes the entire agreement of the parties hereto and shall supersede all prior offers, negotiations, and agreements.
13. **AMENDMENT.** No revision of this agreement shall be valid unless made in writing and signed by a General Manager or corporate officer of DWS and an authorized agent of the Licensee.
14. **CONTROLLING LAW.** The parties agree that the terms of this Agreement shall be interpreted in accordance with the laws of the state of Oregon. Licensee agrees that venue of any action to enforce this Agreement shall be in Multnomah County, Oregon.
15. **WAIVER OF BREACH.** The waiver by DWS of any term under this Agreement is not a waiver of any other term or the waiver of the same term at any other time.
16. **NOTICES.** Any notice required or permitted to be given under any of the provisions of this Agreement or governing law shall be given in writing and either hand delivered or sent by certified first class mail, postage prepaid, to the Licensee's address on the face of this Agreement and to DWS at 4700 SE International Way, Milwaukie, OR 97222.
17. **ATTORNEYS' FEES.** In the event DWS retains an attorney to compel compliance with the terms of this Agreement, DWS shall be entitled to recovery attorneys' fees, collection costs incurred, and any other associated fees and charges.
18. **SEVERABILITY.** If any portion of this Agreement is declared invalid, the remainder of this Agreement shall continue to be binding upon the parties.
19. **ENTIRE AGREEMENT.** This Agreement constitutes the entire Agreement between Licensee and DWS. This Agreement may be amended only by written instrument executed by both parties.
20. **LIMITATION OF LIABILITY.** In no event shall DWS be responsible to the Licensee for any indirect, special or consequential damages or lost profits arising out of or related to this Agreement or the performance or breach thereof. DWS's liability to the Licensee, if any, shall in no event exceed the total amount paid hereunder to DWS by the Licensee.



CUSTOMER INITIAL

DATE

6-4-18

AUTHORIZED SIGNATURE

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CUSTOMER INITIAL

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