

Council Business Meeting

July 16, 2019

Agenda Item	Radio Maintenance Agreement for Police and Fire	
From	Tighe O'Meara/David Shepherd	Police Chief/Interim Fire Chief
Contact	Tighe.omeara@ashland.or.us David.Shepherd@ashland ; (541) 552-2142	

SUMMARY

Staff is seeking approval of a maintenance agreement with Day Wireless for portable and mobile radios for the Ashland Police Department (APD) and a similar agreement for mobile radios for Ashland Fire and Rescue (AF&R).

POLICIES, PLANS & GOALS SUPPORTED

N/A

PREVIOUS COUNCIL ACTION

This contract has been ongoing for several years and represents the only viable option to ensure police and fire radios are maintained.

BACKGROUND AND ADDITIONAL INFORMATION

Both APD and AF&R operate radio systems that utilize both portable and mobile radios. These radios serve as a critical link between members of the departments and dispatch and as the communications backbone of the departments' daily and emergency operations. 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.

FISCAL IMPACTS

These contracts will cost the city \$8,753 for the APD contract and \$2,532 for the AF&R contract. These amounts are already budgeted in the recently approved 2019-2021 budget.

STAFF RECOMMENDATION

Staff recommends Council approve the approval of both contracts with Day Wireless.

ACTIONS, OPTIONS & POTENTIAL MOTIONS

I move to approve the contracts between the Ashland Police Department and Day Wireless and Ashland Fire and Rescue and Day Wireless for the maintenance of the radio system.

REFERENCES & ATTACHMENTS

Attachment 1: Fire Contract

Attachment 2: Police Contract

Attachment 3: Special Procurement Form #9 for APD's contract

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

AUTHORIZED SIGNATURE

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CUSTOMER INITIAL

DATE

**SPECIAL PROCUREMENT
REQUEST FOR APPROVAL**

To: City Council, Local Contract Review Board
From: Tighe O’Meara
Date: July 16, 2019
Subject: REQUEST FOR APPROVAL OF A SPECIAL PROCUREMENT

In accordance with ORS279B.085, this request for approval of a Special Procurement is being presented to the City Council for approval. This written request for approval describes the proposed contracting procedure and the goods or services or the class of goods or services to be acquired through the special procurement and the circumstances that justify the use of a special procurement under the standards set forth ORS 279B.085(4).

- 1. **Requesting Department Name:** Police Department
- 2. **Department Contact Name:** Lynn Merrifield
- 3. **Type of Request:** _____ Class Special Procurement Contract-specific Special Procurement
- 4. **Time Period Requested:** From: 07/01/2019 To: 06/30/2020
- 5. **Total Estimated Cost:** \$8753.00
- 6. **Short title of the Procurement:** Radio Maintenance

Supplies and/or Services or class of Supplies and/or Services to be acquired:

Agreement that covers repair, labor, and annual maintenance for the City of Ashland Police Departments mobile and portable radios (excludes parts or “flat rate repair”.

7. Background and Proposed Contracting Procedure: Provide a description of what has been done in the past and the proposed procedure. The Agency may, but is not required to, also include the following types of documents: Notice/Advertising, Solicitation(s), Bid/Proposal Forms(s), Contract Form(s), and any other documents or forms to be used in the proposed contracting procedure. Attach additional sheets as needed.

Background: The department has directly awarded contracts for radio maintenance to DAY Wireless because they can provide maintenance service that is in line with the programming and transmitting of our radios. DAY Wireless provides our maintenance to our antennas and works with our dispatch center as well.

Proposed procedure: The department is seeking permission to directly award contracts for radio maintenance to qualified vendors based on service, workmanship, accuracy, and knowledge of emergency radio systems.

8. Justification for use of Special Procurement: Describe the circumstances that justify the use of a Special Procurement. Attach relevant documentation.

Radio maintenance is essential in the police field. It is how officers communicate while in the field taking care of the public. It is imperative for calls to transmit accurately with as little noise disruption as possible. This keeps our public safe as well as our officers.

9. Findings to Satisfy the Required Standards: This proposed special procurement:

(a) will be unlikely to encourage favoritism in the awarding of public contracts or to substantially diminish competition for public contracts because:

The Police Department will continue to consider any additional vendors that can supply the current authorized and pre-approved radios, programming, and maintenance.

The Police Department will also review and make note of any additional vendors for future consideration, if and when radio changes are made.

(Please provide specific information that demonstrates how the proposed Special Procurement meets this requirement.); **and**

(b)(i) will result in substantial cost savings to the contracting agency or to the public because:

Radio Maintenance on portable and mobile radios involves working with programming and frequencies. DAY Wireless also services our radio towers which transfers information to our 911 dispatch center. If we were to use another company to perform radio maintenance, there would be additional costs involved since they do not service the other components of the radios.

(Please provide the total estimate cost savings to be gained and the rationale for determining the cost savings); **or**

(b)(ii) will otherwise substantially promote the public interest in a manner that could not practicably be realized by complying with the requirements of ORS 279B.055, 279B.060, 279B.065, or 279B.070, or any rules adopted thereunder because:

It is in the public's best interest for the Police personnel to maintain radio maintenance to ensure that calls for service are received accurately in a timely manner with no disruption in service.

(Please provide specific information that demonstrates how the proposed Special Procurement meets this requirement.)

Public Notice:

Pursuant to ORS 279B.085(5) and OAR 137-047-0285(2), a Contracting Agency shall give public notice of the Contract Review Authority's approval of a Special Procurement in the same manner as a public notice of competitive sealed Bids under ORS 279B.055(4) and OAR 137-047-0300. The public notice shall describe the Goods or Services or class of Goods or Services to be acquired through the Special Procurement and shall give such public notice of the approval of a Special Procurement at least seven (7) Days before Award of the Contract.

After the Special Procurement has been approved by the City Council, the following public notice will be posted on the City's website to allow for the seven (7) day protest period.

Date Public Notice first appeared on www.ashland.or.us - *[Enter date]*

PUBLIC NOTICE

Approval of a Special Procurement

First date of publication: **[Enter date]**

A request for approval of a Special Procurement was presented to and approved by the City Council, acting as the Local Contract Review Board, on **[Enter date]**.

It is in the public's best interest for Police personnel to maintain radio maintenance to ensure that calls for service are received accurately in a timely manner with no disruption in service. The department has directly awarded contracts for radio maintenance to DAY Wireless because they can provide maintenance service that is in line with the programming and transmitting of our radios. DAY Wireless provides our maintenance to our antennas and works with our dispatch center as well. The department is seeking permission to directly award contracts for radio maintenance to qualified vendors based on service, workmanship, accuracy, and knowledge of emergency radio systems.

The Police Department will continue to consider any additional vendors that can supply the current authorized and pre-approved radios, programming, and maintenance. The Police Department will also review and make note of any additional vendors for future consideration, if and when Radio changes are made.

It has been determined based on written findings that the Special Procurement will be unlikely to encourage favoritism in the awarding of public contracts or to substantially diminish competition for public contracts, and result in substantial cost savings or substantially promote the public interest in a manner that could not be realized by complying with the requirements that are applicable in ORS 279B.055, 279B.060, 279B.065, or 279B.070.

An affected person may protest the request for approval of a Special Procurement in accordance with ORS 279B.400 and OAR 137-047-0300. A written protest shall be delivered to the following address: City of Ashland, *Tighe O'Meara, Police Chief, Police Department, 1155 E. Main Street, Ashland, Oregon 97520*. The seven (7) protest period will expire at 5:00pm on **[Enter date-seven calendar days from first date of publication]**

This public notice is being published on the City's Internet World Wide Web site at least seven days prior to the award of a public contract resulting from this request for approval of a Special Procurement.