



City of Saginaw

Meeting Date: 11/01/2016

Staff Contact: Doug Spears
Fire Chief

Agenda Item: 4c
(CC-1016-04)

E-mail: dspears@saginawtx.org

Phone: 817-232-4640

SUBJECT: Action regarding Subscriber Services Agreement with City of Fort Worth for Radio Services

BACKGROUND/DISCUSSION:

The City of Fort Worth owns and operates a regional radio communications system. Our Fire Department owns and operates several radios on the Fort Worth system for interoperability communications, primarily for communications with the Fort Worth Fire Department and MedStar Ambulance. An agreement was approved in 2011 that allows our Fire Department to do this. The proposed Subscriber Services Agreement will give our Fire Department access to the City of Fort Worth radio shop for radio service work including programming and repairs primarily for radios that operate on the Fort Worth radio communications system. The proposed agreement has been reviewed by the City Attorney.

FINANCIAL IMPACT:

N/A

RECOMMENDATION:

Staff recommends approval of the Subscriber Services Agreement with the City of Fort Worth for radio services.

Attachments

Memo with proposed agreement from Doug Spears



Saginaw Fire Department

400 S. Saginaw Blvd. Saginaw, Texas 76179
Tel: 817-230-0412 Fax: 817-232-3731

DOUG SPEARS
FIRE CHIEF

To: City Manager Nan Stanford
From: Fire Chief Doug Spears
Date: September 16, 2016
Re: Subscriber Services Agreement with City of Fort Worth

For your review, please see the attached Subscriber Services Agreement with the City of Fort Worth. The City of Fort Worth owns and operates a regional radio communications system in which the vast majority of public safety agencies utilize as their primary radio system as “paid subscribers”. Our department does own and operate several radios on the Fort Worth system for interoperability communications, primarily for communications with Fort Worth FD and Medstar as an “aid” agency. Being an “aid” agency waives the subscriber fees paid by primary users. We entered into a Communications System Agreement with the City of Fort Worth in 2011 which permits us to operate radios on their system.

The City of Fort Worth radio shop is now offering desperately needed radio service work such as programming and repairs to non-Fort Worth entities who are subscribers on their system. The ability for our department to use their radio shop services requires the approval of the Subscriber Services Agreement. These services are primarily for the radios that operate on the Fort Worth radio system.

Until Fort Worth recently began offering these services there was only one authorized provider, DFW Communications, which could perform radio work on equipment that operates on the Fort Worth radio system. Their performance and customer service, as our department has experienced, is very sub-standard as well as having inflated service rates as the only authorized provider. Those reasons being the primary incentive for Fort Worth to now offer competing services.

I recommend approval of the agreement as presented.

SUBSCRIBER SERVICES AGREEMENT

This **SUBSCRIBER SERVICES AGREEMENT** (the “**Agreement**”) is made and entered into by and between the **City of Fort Worth (“Fort Worth” or “CFW”)** acting herein by and through its duly authorized Assistant City Manager, and the **City of Saginaw (“USER”)**, acting herein by and through its duly authorized City Manager individually referred to as a “party,” collectively referred to herein as the “parties.” The CFW or Fort Worth shall include all employees, directors, officers, agents, and authorized representatives. **USER** shall include all employees, directors, officers, agents, and authorized representatives.

RECITALS

WHEREAS, this Agreement is made under the authority of Sections 791.001-791.029, Texas Government Code; and

WHEREAS, each governing body, in performing governmental functions or in paying for the performance of governmental functions hereunder, shall make that performance or those payments from current revenues legally available to that party; and

WHEREAS, each governing body finds that the subject of this Agreement is necessary for the benefit of the public and each has the legal authority to perform and to provide the governmental function or service which is the subject matter of this Agreement; and

WHEREAS, each governing body finds that the performance of this Agreement is in the common interest of both parties and that the division of costs fairly compensates the performing party for the services or functions under this Agreement; and

WHEREAS, it is the collective desire of both Fort Worth and USER to allow Fort Worth to provide USER with installation, maintenance and repair services for wireless communications components and systems.

NOW THEREFORE, Fort Worth and **USER** agree as follows:

1. Services

CFW shall install, configure, maintain, and repair the following equipment: mobile, portable, and fixed two-way radios and other wireless devices, antennas, speakers, and ancillary equipment, sirens, mobile data computers and related hardware and cabling, and any other similar or related public safety emergency response equipment. Unless mutually agreed prior to commencement of work, CFW shall provide primary maintenance services for the equipment at the CFW IT Solutions radio repair facility (or facilities). The service shall include the regular inspection of the equipment and any maintenance or repair necessary to maintain it in good working order. Upon request, CFW shall also install and remove equipment from vehicles for reuse or disposal. **USER** shall approve equipment installation location and configuration prior to commencement of work, and will inspect and approve installation upon completion.

2. TERM

This Agreement shall begin upon the last day executed by all authorized parties and shall continue in full force and effect unless terminated in accordance with the provisions set forth herein.

3. COMPENSATION

USER shall remit payment to Fort Worth in the amount and manner set forth in **Exhibit A “Fee Schedule.”** CFW may revise Exhibit A to adjust service rates as needed without further action by CFW provided that CFW shall provide not less than sixty (60) days advance written notice to **USER** before any revision to Exhibit A is effective. Estimated total billing is \$5,000 per year. Billing will be from the first day of the month through the last day of the same month. CFW will invoice **USER** no later than the 21st day of the month following the end of each billing period, with the invoice dated on the day it is sent. **USER** will pay CFW within thirty (30) days of receipt of any invoice for services under this Agreement. CFW shall have the right to increase any applicable fees under this Agreement each fiscal year to offset any increased costs incurred by CFW. Any increase in applicable fees will be effective at the beginning of the next CFW fiscal year.

4. LIABILITY

Each party agrees to be liable for any damages or loss that may be caused by its own negligence, omission or intentional misconduct. For purposes of this Section 4, the term party shall include employees, directors, officers, agents, authorized representatives, subcontractors, consultants, and volunteers of the respective party. Nothing in the performance of this Agreement shall impose any liability for claims against either party other than for claims for which the Texas Tort Claims Act may impose liability.

5. INDEPENDENT CONTRACTOR

It is expressly understood and agreed that **USER** shall operate as an independent contractor as to all rights and privileges granted herein, and not as agent, representative or employee of the CFW. Subject to and in accordance with the conditions and provisions of this Agreement, **USER** shall have the exclusive right to control the details of its operations and activities and be solely responsible for the acts and omissions of its employees, directors, officers, agents, authorized representatives, subcontractors, and consultants. **USER** acknowledges that the doctrine of *respondent superior* shall not apply as between the CFW, its employees, directors, officers, agents, and authorized representatives, and **USER** and its employees, directors, officers, agents, authorized representatives, subcontractors, and consultants. **USER** further agrees that nothing herein shall be construed as the creation of a partnership or joint enterprise between CFW and **USER**.

6. NON-APPROPRIATION OF FUNDS

Fort Worth and **USER** will use best efforts to appropriate sufficient funds to support obligations under this Agreement. However, in the event that sufficient funds are not appropriated by either

party's governing body, and as a result, that party is unable to fulfill its obligations under this Agreement, that party (i) shall promptly notify the other party in writing and (ii) may terminate this Agreement, effective as of the last day for which sufficient funds have been appropriated.

7. RIGHT TO AUDIT

USER agrees that the CFW shall, at no additional cost to the CFW, during and until the expiration of three (3) years after termination of this Agreement, have access to and the right to examine at reasonable times any directly pertinent books, documents, papers, records, and communications of the **USER** involving transactions relating to this Agreement. **USER** agrees that the CFW shall have access during normal working hours to all necessary **USER** facilities and shall be provided adequate and appropriate work space in order to conduct audits in compliance with the provisions of this section. The CFW shall give **USER** reasonable advance notice of intended audits.

8. ASSIGNMENT

USER shall not have the right to assign or subcontract any of its duties, obligations or rights under this Agreement without the prior written consent of the CFW. Which such right shall be granted solely at the discretion of the CFW. Any assignment in violation of this provision shall be void.

9. NO WAIVER

The failure of either party to insist upon the performance of any provision or condition of this Agreement or to exercise any right granted herein shall not constitute a waiver of that party's right to insist upon appropriate performance or to assert any such right on any future occasion.

10. GOVERNMENTAL POWERS/IMMUNITIES

It is understood and agreed that by execution of this Agreement, the neither CFW nor **USER** waives or surrender any of its governmental powers or immunities.

11. AMENDMENTS

No amendment to this Agreement shall be binding upon either party hereto unless such amendment is set forth in writing, dated subsequent to the date of this Agreement, and signed by both parties.

12. SEVERABILITY

If any provision of this Agreement is held by a court of competent jurisdiction to be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired.

13. CONFIDENTIAL INFORMATION

To the extent permitted by law, **USER** for itself and its officers, agents and employees, agrees that it shall treat all information provided to it by the CFW as confidential (“City Information”) and shall not disclose any such information to a third party without the prior written approval of the CFW, unless such disclosure is required by law, rule, regulation, court order, in which event **USER** shall notify CFW in writing of such requirement in sufficient time to allow CFW to seek injunctive or other relief to prevent such disclosure. **USER** shall store and maintain City Information in a secure manner and shall not allow unauthorized users to access, modify, delete or otherwise corrupt City Information in any way. **USER** shall notify the CFW immediately if the security or integrity of any City Information has been compromised or is believed to have been compromised.

14. FORCE MAJEURE

The parties shall exercise their best efforts to meet their respective duties and obligations hereunder, but shall not be held liable for any delay in or omission of performance due to force majeure or other causes beyond their reasonable control, including, but not limited to, compliance with any state or federal law or regulation, acts of God, acts of omission, fires, strikes, lockouts, national disasters, wars, riots, material or labor restrictions, transportation problems, existing contractual obligations directly related to the subject matter of this Agreement, or declaration of a state of disaster or emergency by the federal, state, county, or City government in accordance with applicable law.

15. NOTICES.

Notices required pursuant to the provisions of this Agreement shall be conclusively determined to have been delivered when (1) hand-delivered to the other party, its agents, employees, servants or representatives, (2) delivered by facsimile with electronic confirmation of the transmission, or (3) received by the other party by United States Mail, registered, return receipt requested, addressed as follows:

City of Fort Worth
Attn: Susan Alanis, Assistant City Manager
1000 Throckmorton
Fort Worth TX 76102-6311
Facsimile: (817) 392-8654

City of Saginaw
Attn:Nan Stanford
333 W. McLeroy Blvd
Saginaw, TX, 76179
Facsimile: 817-232-4644

With Copy to the City Attorney
At same address

16. GOVERNING LAW / VENUE

This Agreement shall be construed in accordance with the laws of the State of Texas. Venue for any action brought on the basis of this Agreement shall lie exclusively in state courts located in Tarrant County, Texas or the United States District Court for the Northern District of Texas –

Fort Worth Division. In any such action, each party shall pay its own attorneys' fees, court costs and other expenses incurred as a result of the action.

17. SIGNATURE AUTHORITY

The person signing this Agreement hereby warrants that he/she has the legal authority to execute this Agreement on behalf of his or her respective party, and that such binding authority has been granted by proper order, resolution, ordinance or other authorization of the entity. The other party is fully entitled to rely on this warranty and representation in entering into this Agreement.

18. ENTIRETY OF AGREEMENT

This written instrument, including all Exhibits attached hereto, contains the entire understanding and agreement between Fort Worth and **USER** as to the matters contained herein. Any prior or contemporaneous oral or written agreement is hereby declared null and void to the extent in conflict with this Agreement. Any previously executed Communication System Agreement between the parties shall be terminated simultaneously with the final execution of this Agreement by both parties.

19. COUNTERPARTS.

This Agreement may be executed in one or more counterparts and each counterpart shall, for all purposes, be deemed an original, but all such counterparts shall together constitute one and the same instrument.

20. TERMINATION.

Either **USER** or CFW may terminate this Agreement for any reason, with or without cause, upon ninety (90) days written notice to the other party. The CFW, in its sole discretion, shall have the right to deny **USER** services under this Agreement and/or the right to terminate the Agreement immediately if **USER** fails to make full payment of invoiced fees within thirty (30) days of the date payment is due.

21. COMPLIANCE WITH LAWS.

The **USER** shall comply with all current and future Federal, State, and Local laws, Ordinances, and Mandates, including Federal Communications Commission rules and regulations regarding proper use of radio communications equipment.

EXECUTED IN MULTIPLE ORIGINALS on this the ___ day of _____, 20____.

CITY OF FORT WORTH:

CITY OF SAGINAW:

By: _____
Susan Alanis
Assistant City Manager

By: _____
Nan Stanford
City Manager

Date: _____

Date: _____

ATTEST:

By: _____
Mary J. Kayser
City Secretary

ATTEST:

By: _____
Janice England
City Secretary

**APPROVED TO FORM
AND LEGALITY:**

By: _____
Assistant City Attorney

APPROVED TO LEGALITY:

By: _____
Bryn Meredith
City Attorney

Contract Authorization:

M&C: _____

Date Approved: _____

EXHIBIT A

FEE SCHEDULE

Time And Materials Services

Covered Services:

- Mobile Radio Installation
- Mobile Computer Installation
- Radio Repair (Mobile and Portable)
- Base Station Radio Repair
- Radio Template Development
- Radio Code Plug Development
- Radio Programming
- Other Services As Agreed

Applicable Rates:

Labor

1. \$65.00 per hour for work performed during regular business hours (Monday through Friday from 7:30 AM to 6:00 PM except CFW holidays).
2. \$97.50 per hour (*with a two-hour minimum*) for work performed outside regular business hours when User requests work to be performed during these hours.
3. A per-visit trip charge of \$32.50 if User requests work to be performed at a site other than the Fort Worth Radio Services site. Labor rate will be charged beginning with technician's arrival to User site.

Parts and Services

1. Parts and supplies used in the performance of maintenance and repair services will be billed at the vendor's invoiced cost to the City plus 10%.
2. Services from third-parties (such as Motorola repair depot) will be billed at the vendor's invoiced cost to the City plus 10%.

Flat Rate Services

Covered Services:

- Radio Tuning and Alignment (work performed at Fort Worth Radio Services site only)

Applicable Rates:

1. \$32.50 per radio for units delivered by User to the Fort Worth Radio Services site.
2. \$65.00 per mobile radio removed and reinstalled in User vehicles. Vehicle must be delivered by User to the Fort Worth Radio Services site.
3. A trip charge of \$65.00 if the User requests Fort Worth Radio Services staff to pick up and deliver radios to User site.