

**ADDENDUM TO
RADIO SYSTEM MAINTENANCE AGREEMENT BETWEEN THE CITY OF
CORPUS CHRISTI, NUECES COUNTY, REGIONAL TRANSPORTATION
AUTHORITY AND DAILEY & WELLS COMMUNICATIONS, INC.**

Whereas, Dailey & Wells Communications Inc. has been providing maintenance services on a month to month basis.

The City of Corpus Christi, Texas, hereinafter referred to as the City, and Dailey & Wells Communications Inc., a corporation organized under the laws of the State of Texas, hereinafter referred to as the Vendor, do hereby make and enter into this Addendum which, together with the Radio System Maintenance Agreement attached as Exhibit A and all other duly executed Amendments, constitutes the entire agreement under the above-referenced Agreement between the City and the Vendor.

Vendor agrees to provide maintenance service under the same price and conditions as provided in the Radio System Maintenance Agreement (Exhibit A), for the term stated below:

Term. The Effective Date of this Addendum shall be defined as the latest date of signature on this Addendum by the authorized representative of the City. The term of this Agreement is two (2) years from the Effective Date.

If the City has not completed the bidding process and awarded a new Radio System Maintenance Agreement upon the expiration of this Addendum, then Vendor must continue to provide services under this Addendum, at its current fee, on a month to month basis until a new agreement is awarded by the City. This Agreement automatically expires on the effective date of a new contract. The City will provide written notice of the effective date of the new agreement to Vendor.

The Vendor and the City agree to and shall abide by all terms and conditions of the original Radio System Maintenance Agreement and any Amendments to that Agreement, to the extent they are not in conflict with the terms of this Addendum.

EXECUTED by the PARTIES, both of which hereby represent that the signatures to this AGREEMENT, below, are of those persons with the capacity and authority to legally bind the PARTIES.

CITY OF CORPUS CHRISTI

Dailey & Wells Communications Inc.

Samuel Keith Selman
Interim City Manager

Richard A. Wells
President

Date

Date

ATTEST:

Rebecca Huerta
City Secretary

Date

APPROVED AS TO LEGAL FORM:

Buck Brice (Date)
Assistant City Attorney
For City Attorney

EXHIBIT A

RADIO SYSTEM MAINTENANCE AGREEMENT BETWEEN THE CITY OF CORPUS CHRISTI, NUECES COUNTY, REGIONAL TRANSPORTATION AUTHORITY AND DAILEY & WELLS COMMUNICATIONS, INC.

This Radio System Maintenance Agreement (Agreement) is made by and among the City of Corpus Christi, Texas a municipal corporation organized under the laws of the State of Texas, Nueces County, a political subdivision of the State of Texas, and the Corpus Christi Regional Transportation Authority, a regional transportation authority organized under Article 1118x, Vernon's Annotated Texas Statutes (hereinafter collectively "City/County/RTA"), and Dailey & Wells Communications Corporation, a corporation organized under the laws of the State of Texas (hereinafter "Vendor").

Agreement. The Vendor agrees to maintain and repair the City/County/RTA Trunked Radio Communications System (hereinafter collectively the "System"), such maintenance and repair being comprised of services and parts in accordance with the terms and conditions hereinafter set forth. This agreement is for the repair and maintenance of all systems and equipment designated in the Request for Proposal dated May 26, 1998, File No. BI-0142-98, hereinafter "the RFP", and includes but is not limited to the following:

Group A: The maintenance and repair of an Ericsson-GE 800 MHZ public safety trunked radio communication system, and associated Harris/Farion loop microwave system and Zetron fire station alerting system and associated VHF radios.

Group B: The maintenance and repair of user equipment such as mobile radios, portable radios, and fixed-site control station radios with association control equipment that operates on the Ericsson-GE 800 MHZ 16 Plus public safety trunked radio communications system.

Group C: The maintenance, repair, installation and removal of other equipment installed in the City/County/RTA vehicles, such as light bars, sirens, cages, flashing lights, video surveillance/recording equipment, lighting equipment, public address equipment and other electronic equipment as directed by the City/County/RTA.

Premises. The System is installed and operating in the City of Corpus Christi and Nueces County, Texas. The City/County/RTA will secure all necessary consents, easements and rights-of-way for Vendor's access to the System.

Price during initial term. Pricing during the initial two-year term of this agreement shall be in accordance with Exhibit "A" for Group A and Group B. Pricing during the initial two-year term of this agreement shall be in accordance with Exhibit "B" for Group C. All pricing for Groups B and C shall be based on the unit price identified in Exhibits A and B as "Price Ea."

Pricing during optional terms. Prices on Exhibits A and B shall be adjusted during an optional renewal year term by the percentage change in the Consumer Price Index, All Urban

Consumers, U.S. City Average-- All Items (1982-1984=100) published by the Bureau of Labor Statistics of the United States Department of Labor {or its successor index}, "CPI". The Percentage Change will be calculated as follows:

Subtract CPI for September of the previous year from the CPI for September of the then-current year. This will be the index point change. Divide the index point change by CPI for September of the previous year to obtain result. Multiply the result by 100 to obtain the Percentage Change. For example, suppose the CPI for current September is 136.0 and the CPI for the previous September was 129.9. The Percentage Change will be calculated as follows:

$$\begin{aligned}136.0 - 129.9 &= 6.1 \\6.1 / 129.9 &= 0.0469 \\0.0469 \times 100 &= 4.69\% = \text{Percentage Change}\end{aligned}$$

However, if there is no increase in the CPI from the previous year, then the parties agree that the prices shall not change from the previous term during the optional year term.

Group C Pricing. With respect to Group C, the City/County/RTA shall be charged by Vendor based upon the actual services performed by Vendor. For example, using the prices listed in Exhibit B, Nonrecurring Services, if the City/County/RTA requests only removal of a radio antenna, the total price charged for this service shall be \$20 during the initial two-year term of the agreement.

Purchase Quantities. The quantities listed on Exhibit B are estimates and the City/County/RTA are not obligated to purchase said quantities.

Changes. Changes to this agreement may only be made in writing and must be signed by an authorized representative of both the City/County/RTA and Vendor. In an enforcement action, a modification must be in writing and executed by an authorized representative of the party against whom enforcement is sought.

Performance. Vendor's performance shall be in accordance with the RFP, unless modified by this Agreement.

Document Hierarchy. This agreement, the City/County/RTA Radio Maintenance Project Request for Proposal dated May 26, 1998, File No. BI-0142-98, and the Vendor's proposal, will constitute the contract documents, which will be the entire agreement. Any inconsistencies will be resolved in the following order of priority:

- (1) This agreement
- (2) Request for Proposal dated May 26, 1998
- (3) Vendor's Proposal dated June 23, 1998

The City/County/RTA and Vendor agree that such documents are by this reference incorporated herein for all purposes including addenda and exhibits thereto, as though fully set forth herein.

Changes to Specific Sections in the RFP. Sections 1.19, 2.3, 2.4, 2.6, 2.7, 2.8, 2.11, and 3.11 of the RFP are amended as provided in the Vendor's proposal.

Section 2.1 of the RFP is amended as provided in the Vendor's proposal, except item "IV" shall read as follows:

IV. Programming and reprogramming of units when not associated with repair or installation of units shall be on a time and material basis as the needs occur.

Section 2.10 of the RFP is amended with the following additional paragraph: Only batteries under Group A equipment shall be covered. Any and all other batteries for user and other systems (Groups B and C) shall be the responsibility of the owners of that equipment. Defective batteries under Group A prior to Effective Date of this agreement shall be the responsibility of the owners. Vendor reserves the right to charge on a time and material basis for repair of any unit covered under this agreement which was damaged by a contractor other than Vendor.

Section 2.13 of the RFP is amended with the following additional language: A "new replacement unit" is defined as a component covered under Group A or Group B of this agreement which is a commercially available product such as video monitors, radios, computers, UPS systems, and antennas.

Force Majeure. Performance under this agreement shall be adjusted or suspended for either party to the extent that performance is beyond either party's reasonable control for reasons including, without limitation, the following: strikes, work stoppages, fire, water, flood, wind, storms, lightening, other acts of God, public enemy, or governmental action.

Subcontractors. The City/County/RTA agrees that the Vendor may subcontract some or all of the performance of its duties provided that the City/County/RTA gives prior written approval of the subcontractor. In using subcontractors, Vendor is responsible for all of their acts and omissions to the same extent as if the subcontractor and its employees were employees of Vendor. All requirements set forth as part of this Agreement are applicable to all subcontractors and their employees to the same extent as if the Vendor and its employees had performed the services.

INDEMNIFICATION. THE VENDOR AGREES TO AND SHALL INDEMNIFY AND HOLD HARMLESS THE CITY/COUNTY/RTA AND THEIR OFFICERS, AGENTS, AND EMPLOYEES FROM AND AGAINST ANY AND ALL LIABILITY, DAMAGES, LOSS, CLAIMS, DEMANDS, SUITS AND CAUSES OF ACTION OF ANY NATURE WHATSOEVER ON ACCOUNT OF DEATH, PERSONAL INJURIES, PROPERTY LOSS, OR OTHER DAMAGE OF ANY KIND WHATSOEVER, INCLUDING ALL EXPENSES OF LITIGATION, COURT COSTS, AND ATTORNEY FEES, WHICH ARISE OR ARE CLAIMED TO ARISE, OUT OF OR IN CONNECTION WITH AN ACT OR OMISSION OF

THE VENDOR UNDER THIS AGREEMENT, OR ANY SUBCONTRACTOR, SUPPLIER, MATERIALMAN OR THEIR OFFICIALS, EMPLOYEES, OR CONSULTANTS, REGARDLESS OF WHETHER SUCH INJURIES, DEATH, OR DAMAGES, ARE CAUSED OR ARE CLAIMED TO BE CAUSED, IN WHOLE OR IN PART BY THE NEGLIGENCE OR FAULT OF THE CITY/COUNTY/RTA OR THEIR EMPLOYEES.

THE VENDOR SHALL HOLD THE CITY/COUNTY/RTA, THEIR OFFICIALS, EMPLOYEES, ATTORNEYS, AND AGENTS HARMLESS AND SHALL INDEMNIFY THE CITY/COUNTY/RTA, THEIR OFFICIALS, EMPLOYEES, ATTORNEYS, AND AGENTS FROM ANY AND ALL DAMAGES, INJURY, OR LIABILITY WHATSOEVER FROM A NEGLIGENT ACT OR OMISSION OF THE CITY/COUNTY/RTA, THEIR OFFICIALS, EMPLOYEES, ATTORNEYS, AND AGENTS THAT DIRECTLY OR INDIRECTLY CAUSES INJURY TO AN EMPLOYEE OF THE VENDOR, OR ANY SUBCONTRACTOR, SUPPLIER OR MATERIALMAN OF THE VENDOR.

Term. The Effective Date of this Agreement shall be defined as the latest date of signature on this agreement by the authorized representative of the City, the County, or the RTA. The term of this Agreement is two (2) years from the Effective Date. The City/County/RTA and Vendor may renew this agreement annually for an additional three one year periods. The additional agreement period(s) shall commence automatically unless the City/County/RTA or Vendor notifies the other party in the writing thirty (30) days in advance that it wishes not to renew the agreement or that it wishes to modify the terms of this agreement.

Termination. The City, County and RTA shall each have the right to terminate their individual participation in this agreement at the end of each of their respective fiscal years due to lack of funding or appropriations.

The City/County/RTA retains the right to terminate the contract immediately for cause. The City/County/RTA may terminate the contract, with or without cause, upon thirty (30) days written notice to Vendor, certified mail, return receipt requested. Upon receipt of such notice, the Vendor will immediately discontinue all services and work in connection with the performance of this contract, and will proceed to cancel all existing contracts insofar as they are chargeable to this contract.

If the City/County/RTA terminates the contract with or without cause, the City/County/RTA will pay the Vendor for services actually performed prior to such termination, less such payments as have been previously made. The City/County/RTA will not be obligated to pay for any services not performed in a proper, professional manner. The Vendor will not be entitled to any further compensation for work performed by Vendor or anyone under its control or direction from the date of receipt of notice of termination.

Within ten (10) calendar days of termination of the contract, the Vendor will provide the City/County/RTA reproducible copies of all completed work or partially completed documents

prepared under this contract, all such documents being owned by the City/County/RTA.

Month to Month Extension. If the City/County/RTA has not completed the bidding process and awarded a new Radio System Maintenance Agreement upon the expiration of this Agreement, then Vendor must continue to provide services under this Agreement, at its current fee, on a month to month basis until a new agreement is awarded by the City/County/RTA. This Agreement automatically expires on the effective date of a new contract. The City/County/RTA will provide written notice of the effective date of the new agreement to Vendor.

Remedies. No remedy conferred upon or reserved to the City/County/RTA is intended to be exclusive and every such remedy shall be cumulative and shall be in addition to every other remedy under this agreement. No delay or omission to exercise any right or power accruing upon any breach shall impair any such right or power nor shall be construed to be a waiver thereof but any such right and power may be exercised from time to time and as often as may be deemed expedient by the City/County/RTA. Except to the extent expressly limited herein, either party shall have the right to all remedies available at law or in equity for a breach by the other party to this agreement.

Agreement to Pay Attorneys' Fees and Expenses. The prevailing party's costs and expenses, including reasonable attorney's fees and collection fees, incurred in enforcing this Agreement shall be paid by the other party.

Insurance. The Vendor must comply with the Insurance Requirements set forth in the RFP.

Miscellaneous.

a) The parties agree that each of the participating governmental entities reserves the right to obtain Group C maintenance services through another contractor.

b) This Agreement is not assignable by Vendor without the written consent of City/County/RTA.

c) The waiver by either party of any default will not operate as a waiver of any subsequent default.

d) This Agreement supersedes all prior or contemporaneous proposals, communications and negotiations, both oral and written and constitutes the entire agreement between Vendor and City/County/RTA with respect to the maintenance of the System. Any representations, warranties or statements made by an employee, salesperson or agent of Vendor and not expressed in this Agreement are not binding upon Vendor. Any representations, warranties or statements made by an employee of the City/County/RTA and not expressed in this agreement are not binding upon City/County/RTA.

e) If any court holds any portion of this Agreement unenforceable, the remaining language shall not be affected.

f) All notices required or permitted in connection with the Contract Documents shall be in writing addressed as follows: If to City/County/RTA:

City of Corpus Christi
Police Department

Attn: Capt. Leonard Scott
321 John Sartain
Corpus Christi, Texas 78401

If to Vendor:
Mr. Richard Wells, President
Dailey-Wells Communications
5800 Rittiman Plaza
San Antonio, Texas 78218

AGREED TO BY:

City of Corpus Christi

By: [Signature]
David R. Garcia, City Manager
Date: _____

Nueces County

By: [Signature]
Richard Borchard, County Judge
Date: 5/12/99

Attest:

By: [Signature]
Armando Chapa, City Secretary

Regional Transportation Authority

By: [Signature]
Linda Watson, General Manager
Date: 5-21-99

Approved as to legal form
This 12 day of May, 1999
James R. Bray, City Attorney

By: [Signature]
Lisa Aguilar, Asst. City Attorney

Dailey & Wells Communications, Inc.

By: [Signature]
Richard Wells, President
Date: 5/10/99

1199-673 AUTHORIZED
BY COUNCIL [Signature]

SECRETARY [Signature]

EXHIBIT A

Group "A" Backbone System	Fixed Prices	
EDACS 800 MHz Trunked System	Monthly	Annual
EDACS Backbone System	\$ 11,167.48	\$134,009.76
Harris Microwave System	\$ 2,467.50	\$ 29,610.00
Zetron Fire Alert System	\$ 1,100.00	\$ 13,200.00
Totals	\$ 14,734.98	\$176,819.76

Labor Rate "Group A"	Est. Hrs/Yr	Rate	Total
Labor Rate for above	120	\$ 70.00	\$ 8,400.00
GROUP A RECURRING COST		\$ 185,219.76	

Group "B" User Equipment	Prices			
EDACS 800 MHz Trunked System	Quantity	Price Ea.	Monthly	Annual
Rangr Control Station	36	\$ 14.60	\$ 525.60	\$ 6,307.20
FMD Control Station	55	\$ 14.60	\$ 803.00	\$ 9,636.00
MDX Control Station	10	\$ 14.60	\$ 146.00	\$ 1,752.00
MPD Radio & Charger	622	\$ 5.48	\$ 3,408.56	\$ 40,902.72
MPA Radio & Charger	288	\$ 5.48	\$ 1,578.24	\$ 18,938.88
MTL Radio & Charger	5	\$ 5.48	\$ 27.40	\$ 328.80
MRK Radio & Charger	16	\$ 5.48	\$ 87.68	\$ 1,052.16
PCS Radio & Charger	250	\$ 5.48	\$ 1,370.00	\$ 16,440.00
LPE Radio & Charger	16	\$ 5.48	\$ 87.68	\$ 1,052.16
Rangr Mobile Radio	373	\$ 5.48	\$ 2,044.04	\$ 24,528.48
FMD Mobile Radio	401	\$ 5.48	\$ 2,197.48	\$ 26,369.76
MDX Mobile Radio	205	\$ 5.48	\$ 1,123.40	\$ 13,480.80
MDR Mobile Radio	8	\$ 5.48	\$ 43.84	\$ 526.08
Orion Mobile Radio	2	\$ 5.48	\$ 10.96	\$ 131.52
GROUP B RECURRING COST			\$ 13,453.88	\$ 161,446.56

GRAND TOTAL Group A & B \$ 346,666.32

EXHIBIT B

RFP No. BI-0142-98

Group "C"

Group "C" Non-Recurring Services

	Price Ea	Est. Qty.	Total Annual
Complex Vehicle INSTALL Total	\$ 295.00	50	\$ 14,750.00
Radio (trunk mt. w/head), Antenna	\$ 150.00		
Radio Additional Control Head	\$ 100.00	(add)	
Radio Emergency Switch	\$ 20.00	(add)	
Connection to Siren PA	\$ 25.00	(add)	
Normal Vehicle INSTALL Total	\$ 200.00	50	\$ 10,000.00
Radio (underdash), Antenna	\$ 100.00		
Radio Control Head (trunk mount)	\$ 50.00	(add)	
External Speaker	\$ 50.00	(add)	
Removal from Vehicle(s) Total	\$ 125.00	100	\$ 12,500.00
Radio, Antenna	\$ 20.00		
Radio Control Head (ea)	\$ 10.00		
Radio Emergency Switch	\$ 3.00		
Overhead Lights & switches	\$ 20.00		
Grill Lights	\$ 5.00		
Rear Deck Lights	\$ 5.00		
Head Light Wig-Wags	\$ 12.00		
Stop Light Wig-Wags	\$ 12.00		
Siren PA unit w/ speaker	\$ 7.00		
Prisoner Cages	\$ 10.00		
Fire Extinguishers	\$ 2.00		
Shotgun Racks	\$ 5.00		
Radar Units	\$ 5.00		
Video Systems	\$ 2.00		
Mobile VCR	\$ 5.00		
Bumpers (ea)	\$ 2.00		
Install of Emergency System	\$ 375.00	50	\$ 18,750.00
Overhead Lights & switches	\$ 75.00		
Grill Lights	\$ 20.00		
Rear Deck Lights	\$ 20.00		
Head Light Wig-Wags	\$ 50.00		
Stop Light Wig-Wags	\$ 50.00		
Siren PA unit w/ speaker	\$ 50.00		
Prisoner Cages	\$ 40.00		
Fire Extinguishers	\$ 5.00		
Shotgun Racks	\$ 10.00		
Radar Units	\$ 10.00		
Video Systems	\$ 10.00		
Mobile VCR	\$ 25.00		
Bumpers (ea)	\$ 10.00		
GROUP "C" Install/Removal			\$ 56,000.00

Labor Rate for repair of above equipment

\$ 45/hr

Labor Rate for repair of above equipment (weekends)

\$ 70/hr

Weekend work on fixed install prices above

Multiply by 1.5%