



CITY OF STOCKTON

OFFICE OF THE CITY ATTORNEY

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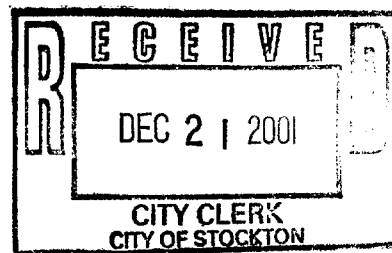
C-01-298 (CPS)

DATE: December 20, 2001

TO: KATHERINE GONG MEISSNER, City Clerk

FROM: MICHAEL T. RISHWAIN, Deputy City Attorney

RE: **SERVICE AGREEMENT BETWEEN THE CITY OF STOCKTON AND DELTA WIRELESS--FIRE ALERTING SYSTEM & TI SUPPORT EQUIPMENT**



Attached is a fully executed agreement dated September 25, 2001. Said agreement was authorized by City Council Resolution No. 01-0498, adopted on September 25, 2001. For accounting purposes, all invoices and correspondence must reference Purchase Order No. 123186

Said agreement may be retained for your files.

OFFICE OF THE CITY ATTORNEY

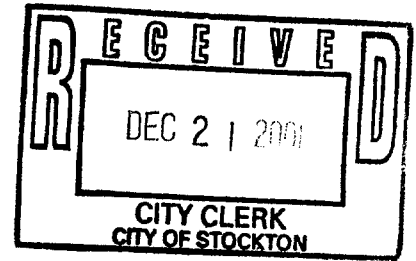
By *Michael T. Rishwain*
MICHAEL T. RISHWAIN
DEPUTY CITY ATTORNEY

MTR:plc

Attachment

cc: Administrative Services Dept. (Attn: Accounts Payable)
Management Information Services (Attn: Joe Luntao)
Delta Wireless
Attn: David Naasz
1830 Field Avenue
Stockton CA 95203

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SERVICE AGREEMENT

THIS AGREEMENT, entered into this 25th day of September, 2001, by and between the City of Stockton, a Municipal Corporation, hereinafter referred to as "CITY", and **Delta Wireless**, a Corporation.

WITNESSETH

WHEREAS, CITY and Delta Wireless desire to enter into an Agreement for the maintenance, repair, and supplies of said Fire Alerting system and TI Support Equipment,

NOW, THEREFORE, IT IS AGREED as follows:

1. That Delta Wireless shall furnish all services, equipment, material, parts, and supplies necessary or convenient to service, maintain and keep in good operation all equipment herein described in a manner satisfactory to CITY. Said equipment shall be serviced as often as may be necessary to keep it in good operating order.
2. Delta Wireless shall be available to render and furnish such services, equipment, materials, parts, and supplies for the servicing of scheduled equipment, and other such equipment as designated by CITY, as set forth in Attachment "B", titled "Statement of Work."
3. Delta Wireless shall perform all services herein agreed to be performed and maintain all records in connection therewith in accordance with the rules and regulations whenever applicable. A copy of said records shall be filed with the City Purchasing Agent.
4. Delta Wireless shall furnish all test equipment and any special equipment required in the proper and full performance of the services herein agreed to be performed.
5. If, in the performance of this Agreement, any third persons are engaged as employees by Delta Wireless, such persons shall be employed by and shall be entirely and exclusively under the direction, supervision, and control of Delta Wireless. All terms of employment of said persons, including hours, wages, working

conditions, discipline, hiring, and discharging, or any other terms of employment or requirements of law, shall be made by Delta Wireless and CITY shall have no right or authority over said persons or the terms and conditions of such employment.

6. Delta Wireless, as an independent employer, shall be liable and hereby exclusively liable as an employer to comply with all Federal, State, and City laws or acts which in any way affect or relate to the relationship of employer and employee, and shall be liable for any taxes or penalties arising or levied by the reason of the employment of such persons employed by him. CITY shall not be liable for any injuries resulting to such persons arising out of or in the course of such employment, or for any injuries to strangers or third persons, but any such liability shall be solely that of Delta Wireless.
7. Delta Wireless shall, during the life of this Agreement, take out and maintain general liability, automobile liability, employer's liability, and professional liability policies with an insurance carrier authorized to transact business in the State of California as will protect Delta Wireless or any subcontractors or anyone directly or indirectly employed by any of them or by anyone for whose acts any of them may be liable from claims for damages because of bodily injury, sickness, disease, or death of its employees or any person other than its employees, or for damages because of injury to or destruction of tangible property including loss of use resulting therefrom.

The minimum limits of liability for such insurance coverage shall be as follows:

- a. General Liability: \$1,000,000 per occurrence for bodily injury, personal injury, and property damage.
- b. Automobile Liability: \$1,000,000 per accident for bodily injury and property damage.
- c. Employer's Liability: \$1,000,000 per accident for bodily injury or disease.
- d. Professional Liability: \$1,000,000 per occurrence.

Such liability insurance policies shall:

- 1) Name CITY as an additional insured by separate endorsement.
- 2) Indemnify CITY against loss arising from operations performed pursuant to this Agreement.
- 3) Acknowledge that coverage under such liability policies shall be primary over any other insurance or self-insurance in force.
- 4) Shall provide that written notice of any changes or cancellation in coverage shall be provided to CITY at least thirty (30) days prior to the effective date of such change or cancellation. Delta Wireless shall provide to CITY (within ten (10) days of the execution of this Agreement) A Certificate of Insurance or other documentation as evidence that such coverage exists.

Delta Wireless shall obtain, and keep in full force and effect during the term of this Agreement, such Workers' Compensation Insurance as necessary to protect Delta Wireless and Delta Wireless' employees, performance pursuant to the terms of this Agreement, and shall supply CITY (within thirty (30) calendar days after the execution of this Agreement) a suitable statement certifying the existence of such protection and that the coverage is consistent with state law.

Before permitting any subcontractors to perform work under this Agreement, Delta Wireless shall require subcontractors to furnish proof that subcontractor has obtained and will maintain insurance, including Workers' Compensation Insurance, in amounts and of a nature similar to that required to be obtained and maintained by Delta Wireless.

8. Delta Wireless will assume responsibility for its own products and acts, and that of its subcontractors and agents. The intent of this clarification is solely to disclaim responsibility for the products and/or actions of others which are outside of Delta Wireless' control.

Before permitting any subcontractors to perform work under the contract, Delta Wireless shall require subcontractors to furnish satisfactory proof that insurance has been issued and is maintained similar to that provided by Delta Wireless as may be applied to each subcontractor's work.

9. Delta Wireless agrees to and hereby indemnifies and saves CITY harmless from all liabilities, judgments, costs, damages, and expenses which may accrue against, be charged to, or recovered from CITY or the property of, injury to, or death of any person, when such damage or injury is caused by Delta Wireless' willful misconduct or negligence or that of its employees, subcontractors, or agents while on the premises of CITY during the delivery and installation of the communications equipment. In no event will Delta Wireless be liable for incidental, special, or consequential damages.
10. Delta Wireless shall be responsible for any liability imposed by law and for injuries to or death of any person or damage to property resulting from defects or obstructions or from any cause whatsoever caused by Delta Wireless' willful misconduct or negligence during the progress of the work or any time before its completion and final acceptance.

In no event will either Delta Wireless or CITY be liable to the other for any loss of time, inconvenience, commercial loss, lost profits or savings or other incidental or consequential damages to the full extent such may be disclaimed by law. No such action shall be brought for any breach of this contract more than one (1) year after the accrual of such cause of action except for money due upon the open account.

The duty of Delta Wireless to indemnify and save harmless, as set forth herein, shall include the duty to defend, as set forth in Section 2778 of the California Civil Code, provided, however, that nothing herein shall be construed to require Delta Wireless to indemnify CITY against any responsibility or liability in contravention of Section 2782 of the California Civil Code, including any loss arising from design defect which is the result of the sole negligence of CITY.

11. It is further understood and agreed that no assignment or transfer in whole or in part of the Agreement shall be binding upon CITY without CITY'S written consent.
12. The compensation to be paid to Delta Wireless for all services herein specified and to be performed by Delta Wireless, and for the furnishing of all equipment, materials, and parts, shall be calculated and determined solely in accordance with the number of units to be serviced during the lifetime of this Agreement. The amount of compensation to be paid for the servicing, maintenance, repair, and supplies of said units, including the furnishing of all equipment, materials, parts, and supplies, as may be necessary, is set forth on Attachment "A", attached hereto.
13. The CITY reserves the right to add, delete, or change equipment on the equipment schedule as required and directed by the CITY'S designated representative(s). Additions or deletions may be single items or include complete facilities. For additions or changes, the monthly cost of maintenance shall be determined on the same basis as the prices currently in effect for existing items. Such additions, deletions or changes, shall become effective immediately for service. Charges shall be adjusted effective with the following quarterly period. Delta Wireless shall advise City the effective date when equipment warranties expire and when equipment is added to the inventory for coverage under this agreement.
14. In addition to the services herein agreed to be performed by Delta Wireless, Delta Wireless shall perform such other related services not herein specifically provided as CITY may deem necessary. Said services shall be performed on a work order basis and for compensation actually agreed upon by the parties hereto at the time of the issuance of the work order. All services performed by Delta Wireless under this Paragraph shall be subject to the provisions of Paragraphs 5, 6, 7, 8, 9, 10, and 11 of this Agreement.
15. The CITY reserves the right to periodically audit all charges and services made by Delta Wireless to the CITY for services provided under the Agreement. Upon request, Delta Wireless agrees to furnish the CITY with necessary information and assistance.
16. This Agreement will be renewed annually by the Stockton City Council adoption of the budget and appropriation of funds. In the event funds are not appropriated this Agreement will terminate

without penalty. In the event Delta Wireless seeks to raise their base price in succeeding years, Delta Wireless shall produce evidence that they have experienced a cost change and by what amount their costs have changed. Negotiated annual price increases may be allowed for each subsequent year, however, at no time will any annual increase exceed the published CPI. The CITY will make payment net 30 days after invoicing by Delta Wireless.

- 17. Either party to this Agreement may terminate this Agreement by giving the other party sixty (60) days written notice.
- 18. NOTICES: All notices, requests, demands and other communications hereunder shall be deemed given only if in writing signed by an authorized representative of the sender, and delivered by facsimile with a hard copy mailed first class, postage prepaid, or when sent by a courier or express services guaranteeing overnight delivery to the receiving party, and addressed to the respective party as follows:

To City: City of Stockton
 Administrative Services Department
 425 N. El Dorado Street
 Stockton, CA. 95202-1997

To: Delta Wireless
 Attn: DAVID MAASZ
1830 FIELD AVE.
 Stockton, CA. 95202

IN WITNESS WHEREOF, the parties hereto have set their hands and seals the day and year first above written.

CITY OF STOCKTON, a Municipal Corporation

ATTEST:

CITY CLERK

Approved as to form:

CITY ATTORNEY

Deputy

CITY MANAGER

"CITY"

DELTA WIRELESS, a Corporation

ATTACHMENT "A"

Quantity	Equipment	Descriptions	Place of Service	Monthly Fees	
				Per Unit	Extended
22	Adtran	TSU100	Stockton Fire	\$13.00	\$286.00
10	Adtran	TSU600	Stockton Fire	\$15.00	\$150.00
6	Quad	FXS Card	Stockton Fire	\$4.00	\$24.00
3		56/64 plug in module	Stockton Fire	\$4.00	\$12.00
3		Dual 56/64 plug in module	Stockton Fire	\$4.00	\$12.00
4	Adtran	v.35 data cards	Stockton Fire	\$4.00	\$16.00
11	Adtran	Voice cards	Stockton Fire	\$4.00	\$44.00
89		E & M Cards	Stockton Fire	\$4.00	\$356.00
18	Cisco	Routers 1601	Stockton Fire	\$35.00	\$630.00
12	Zetron	Model 6	Stockton Fire	\$40.00	\$480.00
7	Zetron	Model 25	Stockton Fire	\$50.00	\$350.00
3	Zetron	Model 26	Stockton Fire	\$65.00	\$195.00
4	Zetron	Remotes	Stockton Fire	\$12.00	\$48.00
12	Motorola	Maxtrac receivers	Stockton Fire	\$12.00	\$144.00
13	Allied	Telesyn 16 port ENET Hub	Stockton Fire	\$3.00	\$39.00
4	3COM	1100 12 port switch	Stockton Fire	\$11.50	\$46.00
8	Adtran	E & M Cards	P.D. Data/Voting	\$3.75	\$30.00

ATTACHMENT "B"**STATEMENT OF WORK**

ADTRAN Response and Repair Services: Maintenance and service response for equipment shall be provided at the Stockton Fire Dispatch Center and Engine Companies on a twenty-four hours a day, seven days a week basis. Services provided will include diagnostics, labor and materials to repair CSU and CSU exchange, if required. Any Equipment reconfiguration or software enhancements due to system adds, moves, or changes commenced by the customer will not be covered under the terms of this agreement.

ZETRON Response and Repair Services: Maintenance and service response for equipment shall be provided at the Stockton Fire Dispatch Center and Engine Companies on a twenty-four hours a day, seven days a week basis. Services provided will include diagnostics, re-addressing, if required, and board exchange and repair. Any Equipment reconfiguration or software enhancements due to system adds, moves, or changes commenced by the customer will not be covered under the terms of this agreement.

CISCO ROUTERS Response and Repair Services: Maintenance and onsite service response for equipment shall be provided at the Stockton Fire Dispatch Center and Engine Companies on a twenty-four hours a day, seven days a week basis. Services provided will include diagnostics, labor, materials to repair router, and advanced hardware replacement services for the Cisco 1600 series router. Any Equipment reconfiguration or software enhancements due to system adds, moves or changes commenced by the customer will not be covered under the terms of this agreement.

CARDS & MODULES Response and Repair Services: Maintenance and service response for equipment shall be provided at the Stockton Fire Dispatch Center and Engine Companies on a twenty-four hours a day, seven days a week basis. Services provided will include diagnostics, labor, materials for repair, and advanced hardware replacement services. Any Equipment reconfiguration or software enhancements due to system adds, moves, or changes commenced by the customer will not be covered under the terms of this agreement.

HUBS, RECEIVERS & SWITCHES Response and Repair Services: Maintenance and service response for equipment shall be provided at the Stockton Fire Dispatch Center and Engine Companies on a twenty-four hours a day, seven days a week basis. Services provided will include diagnostics, labor, materials for repair, and advanced hardware replacement services. Any Equipment reconfiguration or software enhancements due to system adds, moves, or changes commenced by the customer will not be covered under the terms of this agreement.