

AGREEMENT TO PROVIDE
WORK, LABOR, MATERIALS AND
TECHNICAL SERVICES

PARTIES:

THE CITY OF PORTLAND, OREGON, a municipal corporation of the State of Oregon (City), 1220 S.W. Fifth Avenue, Portland, Oregon 97204; and

AMERICAN BUSINESS COMMUNICATIONS, INC. (Contractor), 8233 S.W. Cirrus Drive, Beaverton, Oregon 97005.

EFFECTIVE DATE:

The effective date of this contract is June 1, 1981.

RECITALS:

- (1) The City has determined that it is in its best interest to contract for the procurement and installation of a 911 Communications System; and
- (2) The Contractor has represented to the City that it has the technical capabilities, staff time and expertise for the installation and implementation of the 911 System on the terms defined in this agreement; and
- (3) The City and Contractor have each carefully inspected the Contract Documents identified in the agreement and certifies to each other that those documents are complete and accurate in every respect and comprise the final agreement of the parties.

AGREED:

Now, therefore, in consideration of the mutual covenants herein, the parties agree as follows:

1. Contract Documents

Contract Documents consist of:

- (a) This agreement;
- (b) "Request for Proposals, City of Portland 911 Communications System" (RFP) authorized by Ordinance No. 150945 and including Addenda Nos. 1, dated 1-23-81; 2, dated 2-19-81; 3, dated 2-26-81; and 4, dated 4-9-81;

- (c) Proposal of Contractor entitled "A Proposal for 911 Emergency Communications, City of Portland, Volume I and Section II", (Proposal) bearing submission dates of February 25, 1981 and April 21, 1981.

The whole of the R.F.P. is incorporated and effective as written.

The true, complete and final copies of the afore-described documents are those filed in the Office of the City Auditor on May 15, 1981.

The Contract Documents form the Contract. The Contract represents the entire and integrated agreement between the parties hereto and supersedes all prior negotiations, representations, or agreements, either written or oral, including the Bidding Documents. The Contract may be amended or modified only by a Change Order as herein defined.

In the event of an inconsistency between the Contract Documents, the inconsistency shall be resolved by giving precedence in the following order:

- (a) Agreement
- (b) Contractor's Proposal, Volume I and Section II
- (c) City's Request for Proposal

2. Duties of Contractor

Contractor will furnish all materials, labor, equipment engineering and services necessary to provide and install the 911 System in accordance with Contract Documents.

The services include all labor and skills necessary to produce the final result required by the Contract Documents and all materials, equipment and machinery incorporated or to be incorporated and necessary to produce the final result. The final result includes each obligation, recommendation, or choice contained in Contractor's Proposal and selected by the City.

3. Period of Performance

Performance as set forth herein will commence on the date on which Notice to Proceed is issued by City and all portions of the work shall be completed on or before October 15, 1981.

4. Compensation

City shall pay to Contractor for work required hereunder in accordance with the amounts and schedule set forth on Page 17 of Section II. All payments are subject to five percent (5%) retainage. Contractor hereby covenants with the City that the total performance required hereunder shall be accomplished for a sum not greater than \$317,565.00.

5. Insurance

- (a) The Contractor shall not commence work under this agreement until he has obtained certificates of insurance filed with the City Auditor's Office as required under this paragraph and such certificates have been approved by the City Attorney.
- (b) Contractor shall provide the liability insurance in the amount and in the form provided for by 2.18 of the R.F.P.
- (c) **Compensation Insurance:** The Contractor shall take out and maintain during the life of this Contract, Workmen's Compensation Insurance for all of his employees employed at the site of the project and, in case of his employees employed at the site of the project, and, in case any work is sublet, the Contractor shall require the Subcontractors similarly to provide Workmen's Compensation Insurance for all the latter's employees unless such employees are covered by the protection afforded by the Contractor. In case any class of employees engaged in hazardous work under this Contract at the site of the project is not protected under Workmen's Compensation Statute, the Contractor shall provide, and shall cause each Subcontractor to provide adequate insurance for the protection of his employees not otherwise protected.
- (d) **Public Liability and Property Damage Insurance:** The Contractor shall take out and maintain during the life of this Contract such Public Liability and Property Damage Insurance as shall protect him and any Subcontractors performing work covered by this Contract and the City of Portland and its agents and employees from any claims of any nature, whether meritorious or otherwise, including claims for damages for personal injury; including accidental death as well as from claims for property damages which may arise from operations under this contract, whether such operations be by himself or by any Subcontractor or by anyone directly or indirectly employed by either of them, and the amounts of such insurance shall be as follows:

- 1) Public Liability Insurance for Bodily Injury, Limit of Liability not less than \$100,000 per claim, \$300,000 per occurrence. Property Damage: Limit of Liability not less than \$300,000 per occurrence or a single limit policy of \$300,000.

6. Risk of Loss

Contractor shall take and assume all responsibility for its intentional or negligent acts. As between Contractor and the City, the Contractor shall bear all losses and damages directly resulting to it, or to the City, on account of Contractor's intentional or negligent acts arising out of its activities under the Contract. Should damage or destruction from such intentional or negligent acts occur to the contracted work, the work shall be repaired or replaced without cost to the City to the end that the final results required by the Contract Documents are available to the City at the costs set forth therein.

7. Changes

A Change Order is a written order from the Commissioner-in-Charge or the City Council only.

The City Commissioner-in-Charge is authorized to order such changes as do not in the aggregate increase the Contract sum by more than five percent (5%). The cost of the additional work and any additional time required shall be reasonable and relate only to that required for the specific change. Other changes shall be authorized by the City Council only.

8. Installation

The system shall be installed at Kelly Butte, 2960 S.E. 103rd Drive, Portland, Oregon. Contractor warrants that he inspected the facilities and they are suitable to house the equipment to be supplied.

Contractor will furnish to the City a complete list of system hardware, including spare parts, floor layouts, and cabling plans within fourteen (14) days of contract signing.

Contractor will furnish to the City three (3) sets of "as built" drawings for the complete system and each major sub-system showing all cabling, interconnects, power supply wiring and other information pertinent to system operation within seven (7) days after cutover.

City will furnish clean space with adequate environmental conditioning to house system equipment. City will also provide proper electrical power connections and other improvements required to support the system.

During the installation period, suitable space for storage of uninstalled equipment and materials shall be made available. Access to this space shall be limited to the Contractor, Director, Bureau of Electronic Services and Director, Bureau of Emergency Communications. City assumes no obligation beyond the provision of such space for the safety or protection of uninstalled equipment and materials.

Contractor shall perform all work in a professional manner in accordance with all applicable electrical and building codes. Any correction of error that is required will be accomplished at no cost to the City.

Contractor acknowledges that the existing emergency telephone systems (760-6911 - 761-6811) must remain in operation until system cutover. No interruption of this service will be accepted. To reduce any potential operational disruption, some equipment may have to be installed during other than regular business hours. The City will not reimburse Contractor for any overtime or premium pay work that may be required.

Contractor shall complete all system adjustments and functional testing not less than two (2) weeks prior to estimated system cutover. City shall observe final system testing. If results are satisfactory, City shall notify Contractor of acceptance of final test and select actual date and time for cutover.

Within seven days after cutover, City will notify Contractor of any defects or problems in operation that require correction. All corrections must be made and accepted before Contractor applies for final acceptance.

City may elect to add equipment or services to the system at some future time. Contractor warrants that the cost to the City for such additions shall be no greater than those costs levied on other customers for making the same or reasonably similar additions.

9. Subcontractors

A subcontractor is a person or organization who has a direct contract with the Contractor to perform any of the work. The Contractor, as soon as practical after the award of the Contract, shall furnish City with a list naming all subcontractors proposed for the work. City may reasonably reject any subcontractor proposed for reasons of skill, experience, personnel policy, or financial ability. Notice of rejection of a subcontractor shall be given within seven (7) days of receipt of Contractor's list.

10. Cleaning Up

The Contractor shall keep the premises in a clean condition throughout the period of performance and leave the premises in that condition upon completion. The standard of cleanliness shall be that appropriate and suitable for the protection of the electronic equipment to be installed.

11. Correction of Work and Warranties

Neither the final certificate of payment nor any provision of the Contract shall relieve the Contractor of responsibility for faulty materials and workmanship and he warrants

- (a) All equipment, parts and labor to date of final acceptance by City;
- (b) All software to include materials, design and labor for one (1) year after final acceptance. The 911 System, exclusive of equipment maintenance, to include material, design and labor, for one (1) year after final acceptance.

12. Final Acceptance

Upon successful completion of a thirty (30) day operations and monitoring period following complete cutover to 911 operations, Contractor shall notify City of completion of its obligations hereunder and request final payment of retainage. Upon receipt, City Council shall consider this request and accept the 911 System and authorize final payment of retainage if it finds that the Contract is complete.

13. Maintenance

Contractor warrants the system against all defective parts and workmanship for a period of one year following final system acceptance by the City. All required maintenance, preventive, routine or emergency shall be performed without cost to the City or interruption of service.

Any malfunction of the ACD portion of the switching mechanism which results in substantial loss of service will be deemed a Severe Emergency and require Contractor to begin repairs within two (2) hours after notification, except in severe cases of inclement weather, i.e., ice storms wherein Contractor shall make his best effort. These events may be but are not limited to the following:

- (a) Loss of use of one CPU and restart attempts are unsuccessful;
- (b) Loss of either power supply within the switch;
- (c) Loss of sixteen (16) or more incoming trunks;
- (d) Loss of pre-screener attendant console.

Any malfunction of the switch which substantially affects other functions of the system will be defined as an Emergency and require Contractor to begin repairs within eight (8) hours of notification. These events may include but are not limited to the following:

- (a) Loss of use of intercom function;
- (b) Loss of use of speedcall function from two (2) or more "group two" telephones;
- (c) Loss of use of one (1) supervisor position.

Other verified malfunctions shall require that Contractor begin repairs within twenty-four (24) hours after notification.

14. Right to Terminate Contract

Should the work be stopped by any public authority for a period of thirty (30) days or more, through no fault of the Contractor, or should the work be stopped through act or neglect of the City for a period of thirty (30) days, or should the City wrongfully fail to pay the Contractor any payment within thirty (30) days after it is due, then the Contractor, upon seven (7) additional days written notice to the City to correct such action, may stop work or terminate the Contract and recover from the City payment for all work properly executed at the Contract rate.

City's right to terminate as described in paragraph 4.3 of R.F.P., Section II.

15. Miscellaneous Legal Requirements

All statutory, charter and ordinance provisions that are applicable to public contracts in Portland, Oregon shall be complied with.

This Contract is made in Oregon and the statutory and common law of Oregon shall apply. Should a dispute arise hereunder, the trial forum for settlement thereof shall be the Circuit Court of the State of Oregon.

16. Copyrights, Patents, etc.

Contractor agrees to protect the City for Copyright or patent indemnity as required by Section I, paragraph 2.25 of the R.F.P.

17. Limitation of Liability

Except for liability for injury to persons or damage to tangible property, the Contractor will be liable for damages only to the extent of the maximum amount of this Agreement.

The Contractor will not be liable for consequential damages even if the Contractor has been advised of the possibility of such damages.

Notwithstanding the foregoing, nothing contained herein shall limit Contractor's liability for personal injury and damage to tangible property caused by Contractor's negligence or tortious act.

DATED this _____ day of May, 1981.

CITY OF PORTLAND

By _____
Commissioner of Public Works

By _____
City Auditor

AMERICAN BUSINESS COMMUNICATIONS, INC.

By _____
_____(Title)

By _____
_____(Title)

Approved as to form:

City Attorney

ORDINANCE NO. 151602

An Ordinance authorizing an agreement with American Business Communications, Inc. for purchase and installation of a 911 Communications System at a cost of \$317,565, transferring funds, authorizing the drawing and delivery of warrants, and declaring an emergency.

The City of Portland ordains:

Section 1. The Council finds:

1. Ordinance No. 150945 authorized the Purchasing Agent to seek proposals for a 911 Communications System to be installed at the Kelly Butte Communications Center;
2. The proposal of American Business Communications, Inc. was considered under Council Calendar No. 1373 on May 6, 1981, and the Council directed that a contract be prepared to procure the system from American Business Communications, Inc.;
3. An appropriate form of agreement for said purposes has been negotiated with American Business Communications, Inc. and a copy thereof is attached as Exhibit "A";
4. Sufficient appropriation is available to pay for the system.

NOW THEREFORE, the Council Directs:

- a. An agreement with American Business Communications, Inc. similar in form to Exhibit "A" hereof, is authorized.
- b. The 1980-81 Budget is amended as follows:

GENERAL FUND

<u>TRANSFERS</u>	<u>FROM</u>	<u>TO</u>
Office of Commissioner of Public Works		
(19300048.120)	\$111,710	
(19300048.140)	\$ 11,149	
(19300048.150)	\$ 2,909	
(19300048.170)	\$ 25,000	
(19300048.320)	\$ 3,375	
(19300048.430)	\$ 500	
(19300048.510)	\$ 500	
(19300048.570)	\$ 55,000	
(19300048.640)	\$ 50,000	
Unforeseen Reimbursable Expenditures	\$ 57,422	
Transfers to Other Funds-Electronic Services		\$317,565

ORDINANCE No.

ELECTRONIC SERVICES OPERATING FUND

<u>RESOURCES</u>	<u>FROM</u>	<u>TO</u>
Transfers from Other Funds - General	\$317,565	
 <u>REQUIREMENTS</u>		
Bureau of Electronic Services (36000341.640)		\$317,565

- c. The Mayor and the Auditor hereby are authorized to draw and deliver warrants chargeable to the 1980-81 Budget, Electronic Services Operating Fund, Bureau of Electronic Services (36000341.640), when demand is presented, approved by the proper authorities.

Section 2. The Council declares that an emergency exists because a delay in proceeding with the transfer will prevent completion of the procurement phase and further delay the 911 Communications System, and possibly impact the welfare of the citizens; therefore, this ordinance shall be in force and effect from and after its passage by the Council.

Passed by the Council, **MAY 21 1981**

Commissioner Mike Lindberg
Charles L. Taylor:nm
May 13, 1981

Attest:


Auditor of the City of Portland

R

Calendar No. **1606****ORDINANCE No. 151602****Title**

An Ordinance authorizing an agreement with American Business Communications, Inc. for purchase and installation of a 911 Communications System at a cost of \$317,565, transferring funds, and declaring an emergency.

THE COMMISSIONERS VOTED AS FOLLOWS:		
	Yeas	Nays
JORDAN	1	
LINDBERG	1	
SCHWAB	1	
STRACHAN	1	
IVANCIE		

FOUR-FIFTHS CALENDAR	
JORDAN	
LINDBERG	
SCHWAB	
STRACHAN	
IVANCIE	

INTRODUCED BY
COMMISSIONER LINDBERG

NOTED BY THE COMMISSIONER
Affairs
Finance and Administration
Safety
Utilities
Works <i>ML/mgf</i>

BUREAU APPROVAL
Bureau: Electronic Services
Prepared By: <i>Charles L. Taylor</i> Date: 5-13-81
Budget Impact Review: <input type="checkbox"/> Completed <input type="checkbox"/> Not required
Bureau Head: Charles L. Taylor 5-13-81

CALENDAR	
Consent	Regular

NOTED BY
City Attorney
City Auditor
City Engineer

Filed MAY 15 1981

GEORGE YERKOVICH
Auditor of the CITY OF PORTLAND

By *Franklin D. [Signature]* Deputy

R

Calendar No. 1606

ORDINANCE No. 151602

Title

An Ordinance authorizing an agreement with American Business Communications, Inc. for purchase and installation of a 911 Communications System at a cost of \$317,565, transferring funds, and declaring an emergency.

THE COMMISSIONERS VOTED AS FOLLOWS:		
	Yeas	Nays
JORDAN	1	
LINDBERG	1	
SCHWAB	1	
STRACHAN	1	
IVANCIE		

FOUR-FIFTHS CALENDAR	
JORDAN	
LINDBERG	
SCHWAB	
STRACHAN	
IVANCIE	

INTRODUCED BY
 COMMISSIONER LINDBERG

NOTED BY THE COMMISSIONER

Affairs
 Finance and Administration
 Safety
 Utilities
 Works *MLimg*

BUREAU APPROVAL

Bureau:
Electronic Services

Prepared By: *Charles L. Taylor* Date: **5-13-81**
 Charles L. Taylor

Budget Impact Review:
 Completed Not required

Bureau Head:
Charles L. Taylor 5-13-81

CALENDAR

Consent Regular

NOTED BY

City Attorney
 City Auditor
 City Engineer

Filed **MAY 15 1981**

GEORGE YERKOVICH
 Auditor of the CITY OF PORTLAND

By *George Yerkovich*
 Deputy