

CONTRACT FOR SERVICES

Entered into between the City of Portland, Bureau of Emergency Communications (hereinafter "City) and Level II, Inc., (formerly Level One, Inc.) a California corporation (hereinafter "Level II").

By their signatures below, both parties to this Contract acknowledge their mutual agreement with the following provisions.

1. This agreement shall be effective from July 1, 1981 through June 30, 1983.

2. The agreement is renewable in two year increments as specified in Paragraph Three (3).

3. This agreement shall be extended automatically in odd-numbered fiscal years for additional like terms unless Level II shall terminate this contract by written notice to the City not less than six (6) months prior to expiration or the City shall terminate this contract by written notice by and through the Director of Emergency Communications to Level II not less than ninety (90) days prior to expiration.

4. Prior to any renewal term Level II may increase prices hereunder upon at least six (6) months notice to the City, setting forth the increased prices for each year of the two year agreement.

5. Either party may terminate the agreement during the contract term without recourse should the other party fail to comply with any of the contract provisions.

6. No amendment to this agreement shall be effective unless it is in writing and signed by both parties.

7. No term of provision hereof shall be deemed waived and no breach excused, unless such waiver or consent shall be in writing and signed by the City. Any consent by the City to, or waiver of, breach by Level II, whether express or implied, shall not constitute a consent to, waiver of, or excuse for any other different or subsequent breach.

8. Level II will provide a full-time, on-site Software Engineer at the Bureau of Emergency Communications to provide maintenance, enhancement, and support of the Computer Aided Dispatch (CAD) and Mobile Digital Terminal (MDT) Systems.

9. Level II shall provide to the Director of the Bureau of Emergency Communications upon request a statement presenting evidence of experience, qualifications, and ability to carry out the terms of this contract of any Level II Software Engineer proposed for assignment to the Bureau of Emergency Communications. Such assignment shall be subject to the Director's approval.

10. The Level II engineer will be responsible for establishing procedures and schedules for all other system's usage (i.e., compiling programs, testing, execution of batch jobs, CAD system training mode, system's maintenance, etc.). Such procedures and schedules are subject to the approval of the Director, BOEC.

11. The Level II engineer will coordinate the management of the CAD/MDT system directly with the Director, BOEC.

12. The Level II engineer will coordinate training for systems malfunction contact personnel on each shift as designated by the Director, BOEC. If preliminary analysis indicates that a computational equipment component is faulty either the Level II engineer or the contact will invoke the services of the hardware maintenance contractor. If a software fault is responsible he will correct it or if responsibility cannot be readily determined, the Level II engineer will coordinate fault resolution and correction.

13. The Level II engineer will accept off-shift emergency maintenance calls seven days a week.

14. All emergency maintenance calls shall be placed by the Director, BOEC, Operations Manager, BOEC, or BOEC shift supervisor.

15. Level II staff will comply with all security procedures required of BOEC employees.

16. Level II staff shall have access to the Kelly Butte premises seven days a week, 24 hours per day.

17. Initiation, priority, modification, and deletion of any activities shall be the sole responsibility of the Director, BOEC. The schedule for these activities, Change Request, and emergency maintenance shall not exceed the total hours for the Level II engineer covered by this contract.

18. Any additional task requiring software modification (i.e., CAD/MDT systems enhancement or maintenance) will be formally identified with a properly prepared, and BOEC Director approved, Change Request (CR).

19. The Level II engineer will complete these tasks in the sequence of the priority assigned to unicorporated Change Requests in the most recent CR priority memo subscribed by the Director or the BOEC or his duly appointed CAD/MDT system committee.

20. At the request of the Director of BOEC, the Level II engineer will prepare one or more reports identifying and describing the relative merits of possible candidate features for general enhancement.

21. Any source program changes made during the term of this contract will be documented to the current CAD/MDT systems' standard.

22. All programs designed or coded under this contract will be executable upon the CAD system's Sperry Univac Model V75 or the MDT system's V77.

23. Software configuration will be controlled/documented via a periodic Level II originated Configuration Letter accompanied by a copy of all incorporated CR's it references.

24. The Level II engineer will take security copies as scheduled by the Director, BOEC of the entire suite of the system's software to hold the system free of serious damage from physical media damage or sabotage.

25. The regularly assigned Level II engineer will be away from Kelly Butte three weeks yearly. During this time, Level II will provide an alternate Software Engineer for emergency maintenance within 24 hours after an emergency call. For any other cause of absence, Level II will provide off-site emergency maintenance for a period not to exceed thirty (30) days.

26. The annual fee for the full-time on-site Level II engineer for the 12 month term beginning July 1, 1981 is \$95,850, and for the 12 month term beginning July 1, 1982 is \$99,000.

27. Each year's fee shall be paid in twelve equal payments, which will be billed monthly for the succeeding month's services; such statements will include documentation as required by the Director, BOEC.

28. Normal hours of attendance by the Level II engineer not to exceed forty (40) hours per week, and variances from normal hours are subject to approval by the Director, BOEC.

29. The City of Portland will provide at no charge the Level II staff with the following facilities, supplies, and services.

a. Machine time on the CAD/MDT computational complexes as required to fulfill the terms of this contract.

b. Computer room office with desk, chair, filing and storage cabinets.

c. Stenographic services as determined necessary by the Director, BOEC.

d. Computer supplies (i.e., paper, printer ribbons, etc.).

e. General office supplies (i.e., form binders, labels, paper clips, rubber bands, stationary, etc.).

30. The services of the assigned Level II engineering shall not be contracted to any other party during the term of this agreement without the express written approval of the Director, BOEC.

31. Level II agrees, during the term of this contract, to maintain at Level II's expense all necessary insurance for its employees, including but not limited to, worker's compensation, disability, and unemployment insurance, and to provide the City with certification of their compliance.

32. Level II shall submit a monthly progress report to the City, not less than ten (10) days after the close of each calendar month. Each progress report shall describe the status of Level II's performance since the preceding report, including products delivered, and the progress expected to be made in the next succeeding period.

33. Level II will not subcontract or permit anyone other than Level II personnel to perform any of the work, services or other performance required of Level II under this contract without the written consent of the City.

34. The law of the State of Oregon, whether substantive or procedural, shall apply to this agreement. Each party agrees that it will perform its obligation hereunder in accordance with all applicable laws, rules and regulations now or hereafter in effect.

If any term or provision of this agreement shall be found to be illegal or unenforceable then, notwithstanding, this agreement shall remain in full force and effect and such term or provision shall be deemed stricken.

35. Any and all modifications or enhancements to the systems' software of the City being maintained by Level II under this contract (hereinafter referred to as "modifications or enhancements") which have been designed or developed, or which may in the future be designed or developed by Level II, and all documentation, software configuration or design, concepts, methods, techniques, processes, adaptations, and ideas which form a part of any such modifications or enhancements shall be proprietary to Level II and shall belong solely and exclusively to Level II, and the City will not make use of or disclose the same to anyone without the written consent of Level II, except as hereinafter set forth.

36. Level II hereby grants to the City a non-transferable and non-exclusive license to use each modification or enhancement formally identified in an approved Change Request in perpetuity at any location in use by the City of Portland in connection with the operation of the systems for which they were developed. Such license shall be effective upon acceptance of implementation of authorized agency or instrumentality of the City.

37. Anything in the contract to the contrary notwithstanding, all modifications of enhancements furnished by Level II shall remain confidential and proprietary property of Level II. The City agrees to continue to treat such modifications of enhancements as confidential and proprietary property of Level II and shall acquire no rights in it except to use the same solely for the purposes described in Paragraph 36 above. All such modifications or enhancements and other information supplied directly or indirectly by Level II (except such as may be established to be in the general public domain or which the City may be required to disclose pursuant to judicial or governmental action) shall be received by the City in confidence. The City shall not use or cause to be used any modification or enhancement or other such information for the benefit of any other party whether or not for a consideration unless otherwise agreed, shall not sell, rent, loan, disclose or

otherwise communicate or make available any such modifications or enhancements or other information or any part or modification thereof to any person, shall use the modifications or enhancements only in connection with the operations of the systems for which they were developed (as the same may be further modified or enhanced), and shall take all reasonable precautions to maintain the confidentiality of it, but not less than employed to protect its own proprietary information unless otherwise agreed to by Level II in writing.

38. The City will take appropriate action, by instruction, agreement or otherwise, with any persons permitted access to licensed modifications or enhancements so as to enable the City to satisfy its obligations under the Contract. All copies of licensed modifications or enhancements made by the City, including translations, compilations, partial copies within modifications and updated works are the property of Level II. The City will reproduce and include the copyright instructions, if any, on such copies in accordance with the copyright instructions, if any, provided by Level II. The City will maintain records of the number and location of all copies of modifications or enhancements, if any, and will furnish copies of such records to Level II on request. The City will not provide or otherwise make available any licensed modifications or enhancements in any form without Level II's prior written consent except to the City's employees, Level II's employees or other persons during the period they are on the City's premises for purpose specifically related to the City's use of the licensed modifications or enhancements.

39. Neither party shall be responsible for delays or failures in performance resulting from acts beyond the control of such party. Such acts include but are not limited to acts of God, strikes, lockouts, riots, acts of war, epidemics, governmental regulations superimposed after the fact, fire, communications line failures, power failures, earthquakes or other disasters. However, the foregoing notwithstanding, if any delay in one party's performance excused herein continues more than thirty (30) calendar days, the other party may, at its option, terminate this agreement by giving thirty (30) days' written notice to the party whose performance is so delayed.

40. Upon termination or other expiration of this contract, Level II shall return to the City all papers, materials and other properties of the City in Level II's possession. In addition, Level II will assist the City in orderly termination of this contract and the transfer of all materials and property, tangible and intangible, as may be necessary for an orderly and undisrupted operation of the communications system. Level II charges for such assistance shall be those in effect for the services of the Software Engineer at the time the assistance is rendered.

41. In performance hereunder, neither the City nor Level II shall be liable to the other for any indirect, special or consequential damages.

42. Level II and the City each agree to indemnify the other against all losses, costs and expenses (including reasonable counsel fees) which the other may incur by reason of the breach of any term, provision, covenant, warrant or representation contained herein and/or in connection with the enforcement of this Agreement or any provision thereof.

43. Level II acknowledges that all material and information, relating to or arising out of the conduct of BOEC responsibilities, which has or will come into its possession or knowledge in connection with this contract or the performance thereof, consists of confidential and proprietary data, whose disclosure or use by third parties may be damaging. Level II, therefore, agrees to hold such material and information in strictest confidence, not to make use thereof other than for the performance of this contract, to release it only to employees requiring such information, and not to release or disclose it to any other party.

44. In the event that Level II, Inc. shall cease conducting business in the normal course, become insolvent, make a general assignment for the benefit of creditors, suffer or permit the appointment of a receiver for its business or shall avail itself of, or become subject to, any proceeding under the Federal Bankruptcy Act or any other statute of any state relating to insolvency or the protection of rights of creditors, then at the option of the City, this agreement shall terminate and be of no further force and effect and any property or rights of the City, tangible or intangible, shall forthwith be returned to it.

45. The City shall have the right, on thirty (30) days notice to Level II, to undertake any part of the services covered hereby to be performed by the City. To the extent that such services are being performed by the City, Level II shall be free from further liability for the quality or performance thereof.

46. Upon termination of this contract for any reason (including default by City) the City shall have the right immediately upon demand to obtain access to and possession of all its properties, including, but not limited to current copies of all programs and necessary documentation, all files, intermediate materials and supplies held by Level II. Level II acknowledges that any failure or delay on its part in the delivery of such access and possession to City is and will be deemed willful and malicious and will cause irreparable injury to City, not adequately compensable in damages and for which City may have no adequate remedy at law, and Level II accordingly agrees that City may, in such event, seek and obtain injunctive relief in any court of competent jurisdiction.

47. Level II agrees to make available to the City all services necessary for an orderly takeover at the time of termination of the contract regardless of the reason for such termination, including but limited to, providing all files defined by the City, providing all supplies and other properties of the City. Level II charges for such assistance shall be those in effect for the services of the Software Engineer at the time the assistance is rendered.

49. All of the prices, terms, warranties and benefits granted by Level II herein are comparable to or better than the equivalent terms being offered by Level II to any present customer. If Level II shall, during the terms of this contract, enter into agreements with any other customer providing greater benefits or more favorable terms, this agreement shall thereupon be deemed amended to provide the same to the City, at no additional cost.

50. In performing the above service it is understood and agreed that:

a. The Software Engineer provided is an employee of Level II, Inc. and not an employee of the City, and will not be eligible for any City of Portland employee benefits.

b. Level II, Inc. agrees to hold the City and its officers and employees free and harmless, and to indemnify them for any and

all claims for whatever cause arising out of services provided by Level II in performance of this agreement.

51. In consideration for, and upon mutual execution of this agreement, it is mutually agreed that prior contract #18796 between the parties is hereby terminated.

Level II, Inc.
 Joe Politi, President
 1340 Saratoga-Sunnyvale Rd., Suite 106
 San Jose, California 95129
 (408) 725-1272

George Yerkovich, Auditor
 City of Portland
 1220 Southwest Fifth,
 Portland, Oregon 97204
 (503) 248-4120

Commissioner Mike Lindberg
 City of Portland
 1220 Southwest Fifth, #414
 Portland, Oregon 97204
 (503) 248-4145

Approved as to Form:

City Attorney

Dated this ___ day of ___ 1981.

ORDINANCE NO. 151898

An Ordinance terminating Contract 18796 between the City of Portland, Bureau of Computer Services and Level II, Inc; authorizing a new two-year contract in the amount of \$194,850 between the City of Portland, Bureau of Emergency Communications and Level II, Inc; authorizing the drawing and delivery of warrants; and declaring an emergency.

The City of Portland ordains:

Section 1. The Council finds:

1. Continued oversight of Level II's software maintenance and enhancement activities by the Bureau of Computer Services is no longer necessary.
2. The City's Bureau of Emergency Communications desires to continue contracting with Level II who have the engineering expertise to provide a full-time, on-site Software Engineer at the Bureau to provide maintenance, enhancement and support of the Computer Aided Dispatch (CAD) and Mobile Digital Terminal (MDT) systems.
3. The City's interests are best served by changing from a renewable one-year to a renewable two-year contract.
4. Funds in the amount of \$95,850 to implement the first year of the contract were approved by Council during FY 81-82 budget hearings.
5. Cost of implementation for the second year will be \$99,000 subject to Council's approval during FY 82-83 budget hearings.

NOW, THEREFORE, the Council directs:

- a. The Commissioner of Public Works and the Auditor are hereby authorized to execute a new contract substantially similar in form to Attachment "A" with Level II, Inc. to continue the services of the Software Engineer at the Bureau of Emergency Communications.
- b. Upon execution of the contract authorized herein, prior contract 18796 between the parties is hereby terminated.
- c. The Mayor and Auditor are hereby authorized to draw and deliver warrants chargeable to the 1981-82 budget; General Fund, Bureau of Emergency Communications, Police Communications, RU 620/210 when demand is presented, approved by the proper authorities.

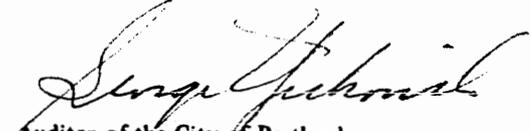
ORDINANCE No.

Section 2. The Council declares that an emergency exists because an orderly transition between fund sources is required to provide for an unbroken continuation of these services; therefore, this Ordinance shall be in force and effect from and after its passage by Council.

Passed by the Council, **JUL 1 1981**

Commissioner Lindberg
June 25, 1981
C. Ray Connery
Professional Services/210
BUC 62000015 (POLCOM Admin.)

Attest:


Auditor of the City of Portland

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

FOUR-FIFTHS CALENDAR	
JORDAN	
LINDBERG	
SCHWAB	
STRACHAN	
IVANCIE	

Calendar No. 2199

ORDINANCE No. 151898

Title

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Filed JUN 25 1981

GEORGE YERKOVICH
Auditor of the CITY OF PORTLAND

George Yerovich
Deputy

INTRODUCED BY
COMMISSIONER LINDBERG

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

BUREAU APPROVAL
Bureau: Bureau of Emergency Communications
Prepared By: C. Ray Connery Date: 6/25/81
Budget Impact Review: <input checked="" type="checkbox"/> Completed <input type="checkbox"/> Not required
Bureau Head: C. Ray Connery

CALENDAR	
Consent	Regular <input checked="" type="checkbox"/>

NOTED BY
City Attorney
City Auditor
City Engineer