

AGREEMENT TO PROVIDE TECHNICAL SERVICES

Parties:

The parties to this agreement are the CITY OF PORTLAND, OREGON (City), a municipal corporation of the State of Oregon, 1220 S. W. 5th Avenue, Portland, Oregon, 97204, and

HEALTH ADVANCEMENT SERVICES, INC. (H.A.S.), Seattle, Washington

Effective Date:

The effective date of this contract is _____, 1980.

Recitals:

(1) The City has determined that it is in its best interest to contract for an analysis (hereinafter called "Study") of the use of a maximum entry-level age as a selection criteria for police officers; this analysis shall be developed for and utilized by the Office of the City Attorney in determining an appropriate course of action concerning pending age-discrimination litigation involving a police officer candidate who does not meet the City Charter's maximum entry-level age requirements;

(2) H.A.S. has represented to the City that it has the available staff time, expertise and technical capabilities to complete this analysis of the use of an entry-level age as a selection criteria in a timely and professional manner..

Authorized Agents:

The City's authorized agent for the purpose of the administration of this contract, and the approval of the tasks to be performed, is Christopher Thomas, City Attorney, based upon the effective recommendation of Captain Robert Schwartz, Bureau of Police Personnel Officer and advice of Jon Stephens, Director of the Bureau of Personnel.

The authorized agent for H.A.S. is Dr. Donna Cohen.

NOW, THEREFORE, in consideration of the mutual covenants herein, the parties agree as follows:

1. Contract Documents

This contract represents the entire and integrated agreement between the parties hereto except as provided for in Task A, under Item 3 - "Performance Timetables", and supersedes all prior negotiations, representations, or agreements, either written or oral. This contract may be amended or modified only by a change, as herein defined.

2. Duties of the Parties

H.A.S. agrees to complete a detailed study of the internal data of the City's Bureau of Police to evaluate a maximum entry-level age as a selection criteria for the job of police officer.

The City, through the Bureau of Police, agrees to provide the necessary clerical support for recording its data, under the supervision of H.A.S.

Other than as herein mentioned in this section, H.A.S. agrees to provide all consultant's costs, travel costs, operational, other costs, resources, and all materials necessary to complete this detailed study. H.A.S. agrees that the services it provides will include all labor and skills necessary to produce the final result required by this contract.

It is the intent of the parties that all duties to be performed herein shall be done professionally and in good faith.

3. Performance Timetables

The parties agree that the performance of this contract by H.A.S. will commence as soon as this agreement is properly executed by the parties, and those tasks herein listed will be completed by H.A.S. on or before May 1, 1980.

Further, H.A.S. agrees to complete the following tasks within the applicable timetables:

- Task A
- (1) A review and written summary of all relevant scientific literature, including any studies done in the field of law enforcement or related areas. The submission of the summary will be included with the Task A(2) report.
 - (2) The development of a study design of methodologies, to accomplish the duties undertaken by H.A.S. in part 2 above. The written report will include definitions of the data to be analyzed, methods of analysis, and a statement of hypothesis applying to each data set analysis. Once approved by the City, this design will become an integrated part of this contract and serve as a performance criteria for tasks following. Four (4) copies of this document will be provided the City by February 22, 1980.

- Task B -
- A detailed progress report written at the end of the data collection period, which contains a listing of all data to be analyzed.

Task C -

A draft final report, with four (4) copies, which contains a detailed written analysis, in scientific research report format, including supporting data analysis summaries in tabular form, appendices of all data analyzed (including all computer printouts), and a detailed explanation of all statistical analyses performed and the rationales for inferences drawn and conclusions of H.A.S. This task will be completed by April 1, 1980. This draft final report will then be reviewed by an independent individual or firm with sufficient expertise mutually satisfactory to the City and H.A.S. for appropriateness of methodology and application of statistical treatment to provide professional assistance to H.A.S. in completing the final report. This review will be paid for by the City, at a maximum cost of \$1000.

This review will be provided to H.A.S. within ten (10) days of receipt of the draft final report by the City. If the methodology and statistical treatment of the draft final report is approved by the reviewing individual or firm mentioned above, or by the City, then payment for satisfactory completion of Task C will be tendered by the City to H.A.S. If the draft final report is not so approved, then H.A.S. will make appropriate revisions, as necessitated by the review and approved by the City, at H.A.S. expense, or H.A.S. can terminate the agreement at that time, and be paid for all work properly performed to date.

Task D -

The final report, with ten (10) copies, which are printed utilizing a high quality process that provides copies suitable for reproduction, that contains the final written analysis, in scientific research report format, as detailed in Task C above. This task will be completed by May 9, 1980.

H.A.S. shall be liable to the City, as fixed, agreed upon, liquidated damages, of \$100 per each and every calendar day that any of the above tasks remain incomplete after a grace period of one (1) week has passed after their respective due dates, unless the delay is due to some circumstance beyond the control of H.A.S., including, but not limited to making revisions pursuant to Task C above. This sum is not intended by the parties as a penalty, but rather, as compensation because of the difficulty in determining damages caused by delays in completing this contract.

4. Compensation

The City agrees to pay H.A.S. the total sum of \$45,750, according to the following schedule.

Upon approval of Task A -	\$ 15,000
Upon approval of Task B -	6,000
Upon approval of Task C -	6,000
Upon approval of Task D -	18,750

5. Risk of Loss

H.A.S. agrees to indemnify, save and hold the City, its agents and employees, harmless from any and all claims or causes of action arising from the performance of this contract by H.A.S., its agents or employees. This clause shall not be construed to bar any legal remedies that H.A.S. may have for the City's failure to fulfill its obligations pursuant to this contract.

H.A.S. shall assume all responsibility for its acts, whether intentional or negligent, in the performance of its obligations pursuant to this contract.

If damage or destruction occurs to any of the contracted work, for any reason not the fault of City, then H.A.S. agrees to repair or replace such work, without cost to the City, so that the final results, to be completed pursuant to this contract, are provided to the City, at the costs set forth herein.

6. Changes

This contract may only be changed, altered or modified, in writing, and with the approval of the authorized agents for both parties.

7. H.A.S. Right to Terminate the Contract

If the performance of this contract is stopped by any public authority for a period of 30 days or more, through no fault of H.A.S., or if the performance of this contract is stopped for 30 days or more due to any intentional or negligent act of the City, or should the City wrongfully fail to pay H.A.S. any payment within 30 days after it is due, then H.A.S. may, seven additional days after written notice to the City to correct such action, stop the performance of the contract or terminate the contract, and recover from the City payment for all work properly performed to the date of termination.

8. City's Right to Terminate the Contract

If any of the provisions of this contract are violated by H.A.S., or any of its agents or employees, then the City may, at any time, terminate this contract. Provided that, in the case of a claimed violation, the City shall give H.A.S. written notice and seven (7) days to cure such claimed violation before the contract shall be considered to be terminated. In the event of such termination, H.A.S. and its surety, if any will remain liable for all losses, expenses and damages caused to the City by reason of the violation or breach by H.A.S. H.A.S. shall be entitled to just compensation for any work performed prior to the date of termination, subject to any right of set-off or claim for damages that the City may have.

9. Subcontractors

A subcontractor is a person or organization who has a direct contract, or work agreement, implied or written, with H.A.S. to perform any of the work required of H.A.S. pursuant to this contract. H.A.S. will, as soon as practicable after the execution of this contract and before any subcontractor begins any work, furnish the City with a listing of all subcontractors proposed for work, along with details of their respective qualifications to perform such work. The City may reasonably reject any subcontractor proposed for reasons of skill, experience, personnel policy or financial ability. Notice of rejection will be provided by the City to H.A.S. within five (5) days after receipt of the list of the proposed subcontractors.

Further, H.A.S. agrees to be fully responsible for the work performed by any and all of its subcontractors or independent contractor or agents.

10. Contract Assignment and Transfer

This contract, or any part thereof, can be assigned or transferred only upon the prior written approval of the authorized agents for both parties.

11. Publicity

Public statements and media releases about this contract and the work to be performed can only be made by H.A.S. after receiving prior approval of the City's authorized agent.

12. Copyright Indemnity

H.A.S. agrees to hold harmless, indemnify, and, if requested by the City, defend, for any claim or action brought against the City based upon a claim that the work performed by H.A.S. under this contract infringes upon any copyright.

Further, if any of the work performed by H.A.S. is found to infringe upon any copyrights, then H.A.S. agrees to re-complete that portion of the contract, at its own expense, in a timely manner, so as to provide a complete, non-copyright infringing, contractual product.

13. Control of Data

H.A.S. agrees that all data involved in this contract that has been provided by, or developed from, the City, is and remains the property of the City. Further, H.A.S. agrees that such data can only be utilized, beyond the performance of this contract, by H.A.S. upon written permission provided by the City's authorized agent. While such permission will not be unreasonably withheld, it is understood by all parties that the City retains the sole authority to withhold such per-

mission if any pending or future litigation would appear to be threatened by the use of such data by H.A.S. All such data, and all copies thereof, will be returned by H.A.S. to the City upon completion or termination of the contract.

14. Publication of Results of Contract Project

H.A.S. agrees that no publication, reproduction or dissemination whatsoever of any of the data collected, analyses undertaken, or results obtained from the performance of this contract will be undertaken, during the performance of this contract or at any time thereafter, without the specific prior written approval of the City's authorized agent. While such permission will not be unreasonably withheld, it is understood by all parties that the City retains the sole authority to withhold such permission if any pending or future litigation would appear to be threatened by the use of such data by H.A.S.

15. Expert Witnesses for Litigation

H.A.S. agrees that, in any litigation in which the City desires to utilize the results of the work performed pursuant to this contract, it will provide, at reasonable cost payable by the City in addition to those payments of Part 4 of this agreement, adequate expert witness testimony to sufficiently establish the credibility and reliability of the study performed pursuant to this contract, in terms of the methodology utilized and the results obtained.

16. Miscellaneous Legal Requirements

- (1) H.A.S. agrees to comply with all statutory, charter and ordinance provisions that are applicable to public contracts in Portland, Oregon.
- (2) This contract is made in Portland, Oregon, and the statutory and common law of Oregon shall apply; if any dispute arises hereunder, the trial forum for settlement thereof shall be the Circuit Court of the State of Oregon.
- (3) No official or employee of the City, who is authorized in his or her official capacity to accept, approve, or participate in decisions regarding this project, shall have any financial or personal interest in this contract.

IN WITNESS WHEREOF, the parties have caused this agreement to be executed on the dates indicated below, the City acting pursuant to Ordinance No. _____

Approved as to form:

City Attorney

CITY OF PORTLAND

By _____
Commissioner of Public Affairs

By _____
Auditor

HEALTH ADVANCEMENT SERVICES, INC.

By _____

ORDINANCE No. 149269

An Ordinance authorizing a contract with Health Advancement Services, Inc., for an independent study of internal data of age as an occupational requirement for the selection of police officers, retroactive to January 9, 1980, and declaring an emergency.

The City of Portland ordains:

Section 1. The Council finds:

- (1) The Council previously recognized the need to undertake an independent study of internal data of age as an occupational requirement for the selection of police officers, by Health Advancement Services, Inc.; the sum of \$46,750 was appropriated for same and transferred from the General Fund to the General Operating Contingencies of the Office of City Attorney; refer to Ordinance No. 149009, dated January 9, 1980; upon the Council's approval of the expenditure and transfer of the funds, work was begun on January 9, 1980.
- (2) The Bureau of Police, Bureau of Personnel and the Office of the City Attorney have negotiated a detailed contract with Health Advancement Services, Inc., which is attached, for approval, to accomplish the study.

NOW, THEREFORE, the Council directs:

- (a) That the Commissioner of Public Affairs and City Auditor execute the contract, similar in form attached hereto as Exhibit "A," said contract to be retroactive to January 9, 1980.

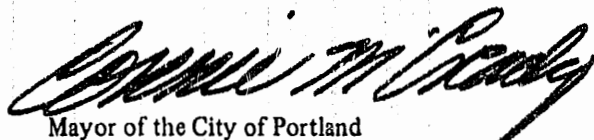
Section 2.


That an emergency exists because the City's defense in the pending litigation in this matter requires that the result of this study be available to the Office of the City Attorney as soon as possible; therefore, this ordinance shall be in force and effect from and after its passage by the Council.

Passed by the Council, **MAR 13 1980**

Commissioner Schwab
March 6, 1980
KHScoumpendis/fg

Attest:


Mayor of the City of Portland


Auditor of the City of Portland

Calendar No. 816

ORDINANCE No. 149269

Title

An Ordinance authorizing a contract with Health Advancement Services, Inc., for an independent study of internal data of age as an occupational requirement for the selection of police officers, retroactive to January 9, 1980, and declaring an emergency.

THE COMMISSIONERS VOTED AS FOLLOWS:		
	Yeas	Nays
Ivancie	1	
Jordan		1
Lindberg	1	
Schwab	1	
McCready	1	

FOUR-FIFTHS CALENDAR	
Ivancie	
Jordan	
Lindberg	
Schwab	
McCready	

INTRODUCED BY
Commissioner Schwab

NOTED BY THE COMMISSIONER
Affairs
Finance and Administration
Safety
Utilities
Works

BUREAU APPROVAL	
Bureau:	
Prepared By: KHScountperdis/fg	Date: 3/6/80
Budget Impact Review:	
<input type="checkbox"/> Completed <input type="checkbox"/> Not required	
Bureau Head:	

NOTED BY
City Attorney
City Auditor
City Engineer

Filed MAR 7 1980

GEORGE YERKOVICH
Auditor of the CITY OF PORTLAND

By *Gordon C. ...*
Deputy