

**RBE 1. GENERAL PROVISIONS****RBE 1.01 Construction of Rules**

These Rules shall be liberally construed to promote the purposes of Portland City Code Chapter 23.10 ("Ordinance") and permit the City or BOLI to accomplish its administrative duties and to secure the just and efficient determination of the merits of all complaints received.

**RBE 1.02 Definitions**

1. "City" means the City of Portland, Oregon, or the area within the territorial City limits of the City of Portland, Oregon, and such territory outside this City over which the City has jurisdiction or control by virtue of ownership or any Constitutional or Charter provisions, or law.
2. "BOLI Commissioner" means the Commissioner of the Bureau of Labor and Industries (BOLI) of the State of Oregon.
3. "Employer" means any person or entity who directly or through an agent employs another for a position being performed a majority of the time within the City, but does not include:
  - a. The United States Government; or
  - b. The State of Oregon and any office, department, agency, authority, institution, association, society or other body of the state, including the legislature and the judiciary; or
  - c. Any political subdivision of the State of Oregon or any county, city, district, authority, public corporation or public entity other than the City; or
  - d. Any person or entity with fewer than six employees.
4. "Employ" means to engage or use the personal service of another person on a full-time, part-time, temporary or seasonal basis, where the Employer reserves the right to control the means by which such service is performed.
5. "Employee" means a person employed by an Employer.
6. "Conditional Offer of Employment" means any offer to employ another that is conditioned solely on:
  - a. The results of an Employer's inquiry into, or gathering of information about, the Applicant's criminal history; and/or
  - b. Some other contingency expressly communicated to the Applicant at the time of the offer.

7. “Volunteer” means any person other than one who is a participant in a work experience or school directed professional training program, or receives benefits such as insurance, tuition reimbursement, or access to professional certification.
8. “Applicant” means a person who applies or is otherwise a candidate to become an Employee.
9. “Arrest History” means information indicating that a person has been apprehended, detained, taken into custody, held for investigation, or restrained in any way by a law-enforcement agency or military authority due to an accusation or suspicion that the person may have committed a crime or that the person is a juvenile who may have committed an act that would be a crime if committed by an adult.
10. “Conviction History” means information regarding a final criminal adjudication, a final juvenile delinquency adjudication, or any other criminal or juvenile-delinquency disposition adverse to a person, including a verdict of guilt, finding of guilt, plea of guilty, plea of no-contest or *nolo contendere*, or finding that a juvenile is within the jurisdiction of the juvenile court by reason of having committed an act that would be a crime if committed by an adult.
11. “Criminal History” means Arrest History or Conviction History, or both.
12. “Criminal History Matrix” means Exhibit A attached to these Rules.

## **RBE 2 USE OF CRIMINAL HISTORY BY AN EMPLOYER**

### **RBE 2.01 In General**

Except as expressly authorized by these Rules, it is an unlawful practice for an Employer to exclude an Applicant from consideration, or to rescind a Conditional Offer of Employment, solely because of the Applicant’s Criminal History.

### **RBE 2.02 Before Conditional Offer of Employment**

1. **In General.** An Employer who gathers, obtains, or uses an Applicant’s Criminal History before making a Conditional Offer of Employment violates the Ordinance and these Rules.
2. **Gathering of Criminal History Prohibited.** Before making a Conditional Offer of Employment, an Employer shall not engage in any direct or indirect conduct that is intended or objectively likely to result in the gathering or disclosure of an Applicant’s Criminal History. This includes, but is not limited to, performing criminal background checks, requesting an Applicant to disclose his or her Criminal History in an application form or at an interview, or engaging in any conduct that is intended or objectively likely to cause an Applicant to disclose his or her Criminal History.

3. **Self-Disclosure by Applicant.** If, despite the Employer's compliance with Subsection 1 above, an Applicant discloses his or her Criminal History at any time before a Conditional Offer of Employment is made by the Employer, the Employer must disregard that information and must take reasonable steps to prevent further disclosure or dissemination of the Applicant's Criminal History. The Employer shall not base its decision to make or not make a Conditional Offer of Employment upon any Criminal History that was disclosed by the Applicant.

### **RBE 2.03 After Conditional Offer of Employment**

1. **In General.** An Employer may obtain or consider an Applicant's Criminal History only after making a Conditional Offer of Employment to the Applicant.
2. **Permissible Uses of Criminal History.** An Employer may rescind a Conditional Offer of Employment based upon an Applicant's Criminal History only if the Employer determines in good faith that a specific offense or conduct by the Applicant is job related for the position in question and consistent with business necessity.
3. **Individualized Assessment Required.** When making a good-faith determination whether a specific offense or conduct by an Applicant is job related for the position in question and consistent with business necessity to warrant rescinding a Conditional Offer of Employment, an Employer must conduct an individualized assessment of:
  - a. The nature and gravity of the Applicant's offense or conduct;
  - b. The time that has elapsed since the offense or conduct;
  - c. The position for which the Applicant is being considered.
4. **Prohibited Uses of Criminal History.** Notwithstanding Subsections 1 through 3 above, an Employer is prohibited from considering the following types of Criminal History after making a Conditional Offer of Employment:
  - a. Any Arrest History that did not lead to conviction or juvenile adjudication, unless the related crime or act that would be a crime if committed by an adult is unresolved, or related criminal charges or juvenile adjudication are still pending against the Applicant;
  - b. Any Conviction History, and related Arrest History, that has been judicially voided or expunged;
  - c. Any Criminal History that was resolved through the completion of a diversion or deferral-of-judgment program for offenses not involving

physical harm or attempted physical harm to a person.

5. **Notification Required.** If an Employer rescinds a Conditional Offer of Employment because of an Applicant's Criminal History, the Employer must notify the Applicant of that decision promptly and in writing, and must identify the specific item of Criminal History on which the rescission is based and the source of that Criminal History.
  - a. As used in this subsection, notification "in writing" includes in-person delivery of a paper document, delivery of such a paper document through the postal service or an equivalent private courier service, electronic delivery via e-mail, and any other means by which the Applicant is provided with a permanent record of the notification. It does not include telephonic voicemail or text messaging.
  - b. An Employer may use the form attached to these Rules as Exhibit B to notify an Applicant of the rescission of a Conditional Offer of Employment.

#### **RBE 2.04 Exceptions**

1. **Other Laws.** The prohibitions of the Ordinance do not apply if federal, state, or local law requires an Employer to consider an Applicant's Criminal History.
2. **Law Enforcement.** The prohibitions of the Ordinance do not apply to an Employer that is a law-enforcement agency or that is part of the criminal-justice system.
3. **Volunteers.** The prohibitions of the Ordinance do not apply to an Employer that is considering an Applicant for a non-Employee volunteer position only.
4. **Sensitive Positions.** For the following positions, an Employer may consider an Applicant's Criminal History at any point of the hiring process consistent with ORS 659A.360, and may use the Criminal History Matrix to screen Applicants, but must otherwise comply with all other requirements of the Ordinance and these Rules. The Employer must conduct the same type of individualized assessment as under RBE 2.03(3) for any Criminal History not contained in the Criminal History Matrix, or if the Employer declines to use the Criminal History Matrix.
  - a. Positions involving direct access to, or the provision of services to, children, the elderly or persons with disabilities
  - b. Positions involving direct access to, or the provision of services to, persons with mental illness, alcohol or drug dependence, or substance-abuse disorders.
  - c. Positions that require one or more of the following responsibilities:

- Master key holders, including maintenance personnel
  - Tow truck operators (may access DMV driving record as well)
  - Drivers of goods, equipment, personal property and persons (may access DMV driving record as well)
  - Access to confidential and/or sensitive info (personnel, medical, discipline records, etc.)
  - Mandatory insurance bonding
- d. Positions designated by the Employer as part of a federal, state, or local-government program designed to encourage the employment of those with Criminal Histories.

### **RBE 2.05 Confidentiality and Nondisclosure**

An Employer must keep confidential any Criminal History that it obtains, unless disclosure is required by law.

### **RBE 3 ENFORCEMENT**

#### **RBE 3.01 Complaints**

1. **Complaint by Applicant.** Any person claiming to be aggrieved by a violation of the Ordinance or these Rules may file a complaint with the BOLI Commissioner. Such a complaint will use the procedures outlined in ORS 659A.820, as applicable.
2. **Complaint by City, BOLI Commissioner, or Attorney General.** If the City, the BOLI Commissioner, or the Attorney General has reason to believe that any Employer has violated the Ordinance or these Rules, it may file a complaint using the procedures outlined in ORS 659A.825, as applicable.
3. **Investigation and Hearing Procedures.** In investigating complaints, conducting hearings, and enforcing the Ordinance or these Rules, the BOLI Commissioner shall have the same powers and shall follow the same procedures as under ORS 659A.820 through 659A.865 and their implementing regulations, as applicable.
4. **No Private Right of Action.** Subsections 1 and 2 above are the exclusive vehicle for initiating enforcement against an Employer, and the Ordinance does not create a private right of action by which a person claiming to be aggrieved by a violation of the Ordinance or these Rules may file an action in circuit court against an Employer.

#### **RBE 3.02 Time Limitation**

A complainant has 180 days after the delivery of the notification required by RBE 2.03 (5) to file a complaint with the BOLI Commissioner. Complaints filed more than 180 days after such notification are time-barred.

#### **RBE 3.04 Civil Penalties**

1. In addition to the remedies provided under ORS 659A.820 through 659A.865, if the City brings an action against an Employer who has demonstrated a pattern and practice of violating the Ordinance, the BOLI Commissioner may assess a civil penalty of up to \$5,000 for each violation of the Ordinance or these Rules.
2. Any civil penalties assessed by the BOLI Commissioner under this section shall be payable directly to the City.

#### **RBE 3.05 Orders Issued**

Any order issued by the BOLI Commissioner under the Ordinance or these Rules shall be viewed as one issued by a hearings officer employed by the City within the meaning of ORS 3.136(3) and shall be fully enforceable by the City.

**Criminal History Matrix for Exceptions Under AR RBE 2.04 (4) (a) & (b)**

All criminal convictions not discussed below are subject to individualized assessment requirement contained in 23.10.030

	Permissible Actions		
	Can we deem the applicant permanently ineligible for the position?	Can we deem the applicant ineligible for the position for 10 years?	Must we perform an individualized assessment as required by <a href="#">City Code Section 23.10.030</a>
Position involving direct access to, or the provision of services to, children under the age of 18	Yes, for Categories A & B and any Sex Crime as defined by ORS 163A.005(5), or their Federal or out-of-state equivalents.	N/A	Yes, for all other criminal convictions.
Position involving direct access to, or the provision of services to, persons with disabilities	Yes, for Categories A & B and any Sex Crime as defined by ORS 163A.005(5), or their Federal or out-of-state equivalents.	Yes, for Category C Crimes, or their Federal or out-of-state equivalents.	Yes, for all other criminal convictions.
Position involving direct access to, or the provision of services to, persons 65 and older	Yes, for Categories A & B and any Sex Crime as defined by ORS 163A.005(5), or their Federal or out-of-state equivalents.	Yes, for Category C Crimes, or their Federal or out-of-state equivalents.	Yes, for all other criminal convictions.
Position involving direct access to, or the provision of services to, persons with mental illness	Yes, for Category A, or their Federal or out-of-state equivalents.	No.	Yes, for all other criminal convictions.
Position involving direct access to, or the provision of services to, persons with alcohol or drug dependence or with substance-abuse disorders	Yes, for Category A, or their Federal or out-of-state equivalents.	No.	Yes, for all other criminal convictions.

**CONVICTIONS LIST****CATEGORY A<sup>1</sup>**

ORS 163.095, Aggravated murder	ORS 163.405, Sodomy I
ORS 163.115, Murder	ORS 163.411, Unlawful sexual penetration I
ORS 163.375, Rape I	ORS 163.427, Sexual abuse I

**CATEGORY B<sup>2</sup>**

ORS 163.118, Manslaughter I	ORS 163.535, Abandonment of child
ORS 163.125, Manslaughter II	ORS 163.537, Buying or selling person under 18
ORS 163.145, Criminally negligent homicide	ORS 163.547, Child neglect I
ORS 163.149, Aggravated vehicular homicide	ORS 163.670, Using child in display of sexually explicit conduct
ORS 163.165, Assault III	ORS 163.680, Paying for viewing child's sexually explicit conduct
ORS 163.175, Assault II	ORS 163.684, Encouraging child sexual abuse I
ORS 163.185, Assault I	ORS 163.686, Encouraging child sexual abuse II
ORS 163.187, Strangulation	ORS 163.687, Encouraging child sexual abuse III
ORS 163.200, Criminal mistreatment II	ORS 163.688, Possession of materials depicting sexually explicit conduct of child I
ORS 163.205, Criminal mistreatment I	ORS 163.689, Possession of materials depicting sexually explicit conduct of child II
ORS 163.225, Kidnapping II	ORS 164.057, Aggravated theft I
ORS 163.235, Kidnapping I	ORS 164.098, Organized retail theft
ORS 163.263, Subjecting another to involuntary servitude II	ORS 164.215, Burglary II
ORS 163.264, Subjecting another to involuntary servitude I	ORS 164.225, Burglary I
ORS 163.266, Trafficking in persons	ORS 164.325, Arson I
ORS 163.275, Coercion	ORS 164.405, Robbery II
ORS 163.355, Rape III	ORS 164.415, Robbery I
ORS 163.365, Rape II	ORS 165.013, Forgery I
ORS 163.385, Sodomy III	ORS 165.022, Criminal possession of forged instrument I
ORS 163.395, Sodomy II	ORS 165.032, Criminal possession of forgery device
ORS 163.408, Unlawful sexual penetration II	ORS 165.800, Identity theft
ORS 163.415, Sexual abuse III	ORS 165.803, Aggravated identity theft
ORS 163.425, Sexual abuse II	ORS 167.012, Promoting prostitution
ORS 163.432, Online sexual corruption of a child II	ORS 167.017, Compelling prostitution
ORS 163.433, Online sexual corruption of a child I	ORS 167.057, Luring a minor
ORS 163.435, Contributing to sexual delinquency of a minor	ORS 167.320, Animal abuse I
ORS 163.445, Sexual misconduct, if offender at least 18	ORS 167.322, Aggravated animal abuse I
ORS 163.525, Incest with child victim	

**CATEGORY C**

ORS 475.752, Unlawful delivery or manufacture of controlled substances, if charged as felony	ORS 475.858, Unlawful manufacture of marijuana within 1,000 feet of school
ORS 475.806, Unlawful manufacture of hydrocodone	ORS 475.860, Unlawful delivery of marijuana, if charged as felony
ORS 475.808, Unlawful manufacture of hydrocodone within 1,000 ft. of school	ORS 475.862, Unlawful delivery of marijuana within 1,000 feet of school
ORS 475.810, Unlawful delivery of hydrocodone	ORS 475.866, Unlawful manufacture of 3,4-methylenedioxy-methamphetamine
ORS 475.812, Unlawful delivery of hydrocodone within 1,000 ft. of school	ORS 475.868, Unlawful manufacture of 3,4-methyl-enedioxymethamphetamine within 1,000 feet of school
ORS 475.816, Unlawful manufacture of methadone	ORS 475.870, Unlawful delivery of 3,4-methylene dioxymethamphetamine
ORS 475.818, Unlawful manufacture of methadone within 1,000 ft. of school	ORS 475.872, Unlawful delivery of 3,4-methylene-dioxymethamphetamine within 1,000 feet of school
ORS 475.820, Unlawful delivery of methadone	ORS 475.876, Unlawful manufacture of cocaine
ORS 475.822, Unlawful delivery of methadone within 1,000 ft. of school	ORS 475.878, Unlawful manufacture of cocaine within 1,000 feet of school
ORS 475.828, Unlawful manufacture of oxycodone within 1,000 feet of school	ORS 475.880, Unlawful delivery of cocaine
ORS 475.830, Unlawful delivery of oxycodone	ORS 475.882, Unlawful delivery of cocaine within 1,000 feet of school.
ORS 475.832, Unlawful delivery of oxycodone within 1,000 feet of school	ORS 475.886, Unlawful manufacture of methamphetamine
ORS 475.846, Unlawful manufacture of heroin	ORS 475.888, Unlawful manufacture of methamphetamine within 1,000 feet of school
ORS 475.848, Unlawful manufacture of heroin within 1,000 feet of school	ORS 475.890, Unlawful delivery of methamphetamine
ORS 475.850, Unlawful delivery of heroin	ORS 475.892, Unlawful delivery of methamphetamine within 1,000 feet of school
ORS 475.852, Unlawful delivery of heroin within 1,000 feet of school	ORS 475.904, Unlawful delivery or manufacture of controlled substance within 1,000 feet of school
ORS 475.856, Unlawful manufacture of marijuana, if charged as felony	ORS 475.906, Unlawful delivery of controlled substance to minor, if charged as felony

<sup>1,2</sup> Includes Attempts per ORS 161.405, Criminal Conspiracy per ORS 161.450, and Solicitation per ORS 161.435

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NOTICE OF RESCISSION OF CONDITIONAL OFFER OF EMPLOYMENT

Pursuant to Portland City Code, 23.10.030 F & Administrative Rule \_\_\_\_\_

[Name of Applicant]

[Physical or email address]

Date:

Dear Applicant:

You were extended a Conditional Offer of Employment on \_\_\_\_\_ for the position of \_\_\_\_\_, after which time a review of your Criminal History was conducted.

After conducting an individualized assessment of your Criminal History as it relates to the position for which you have applied, we have decided to rescind this offer based on the highlighted item(s) in the attached Criminal History report.

The Criminal History report was generated by the company named below. Please address any perceived errors, misstatements or omissions to the reporting company.

XYZ Criminal History Check, Inc.

Address

Phone number

Website

Thank you for your interest in our company.

Sincerely,

Jane Doe  
HR Administrator

INTERGOVERNMENTAL CONTRACT  
BETWEEN THE CITY OF PORTLAND AND THE STATE OF OREGON,  
BUREAU OF LABOR AND INDUSTRIES  
City Contract No.

This Contract is entered into by and between the City of Portland, Oregon, a municipal corporation (City), and the Oregon Bureau of Labor and Industries (BOLI or Subrecipient), an agency of the State of Oregon, pursuant to ORS 190.110 to provide administrative enforcement of complaints for violations of Portland City Code Chapter 23.10 and implementing administrative regulations (referred to as "Code & Regulations" in this Contract and exhibits), addressing the removal of barriers to employment.

The parties agree as follows:

1. Effective Date and Duration

- a. Effective Date: This Contract shall be effective when signed by both parties and shall cover expenses incurred by BOLI after July 1, 2016.
- b. Termination Date - New Case Intake: This Contract will remain in effect as to intake of new cases until June 30, 2017, unless terminated as provided in Section IV.
- c. Termination Date - Disposition of Cases Filed with BOLI: With respect to cases initiated with BOLI prior to June 30, 2017, or the date of early termination pursuant to Section IV, this Contract shall remain in effect through completion of BOLI's administrative processing of such cases. However, upon written notice to the City, BOLI may stop accepting complaints at any time it determines remaining enforcement funds may not be sufficient to complete processing of new complaints.

2. Contract Manager

Each party has designated a contract manager to be the representative for this project. The City's Commissioner-In-Charge or the BOLI Commissioner may change the designation of their respective contract managers from time to time by giving notice as provided in this section. All reports, notices, and other communications required under or relating to this subrecipient contract shall be directed to the appropriate individual identified below. The City and BOLI contract managers are authorized to approve work and billings hereunder, to provide the notices referred to in this Contract, to terminate the Contract as provided in this Contract, and to approve all changes except those that increase the total contract amount. The City Contract Manager may approve amendments to extend the term of this Contract from year to year, subject to appropriation by the City Council of sufficient funds to pay for BOLI's services in such additional year or years.

<b>City</b>	<b>Subrecipient</b>
Contract Manager: Judy Prosper City Attorney's Office 1221 SW 4th Ave., Suite 430 Portland, OR 97204 (503) 823-4047 judy.prosper@portlandoregon.gov	Contract Manager: TBD by BOLI  EEO: EXEMPT Business License No.: EXEMPT

3. Scope of Services

The statement of work is contained in Section I.

4. Reimbursement of Expenses

The amount of compensation shall not exceed \$25,000 over the term of the contract. The compensation requirements are contained in Section III.

5. Reporting

The Reporting requirements are contained in Section VIII.

6. Funding

This subrecipient contract may be paid fully or in part with funding from the City of Portland General Fund.

7. List of Exhibits

The following Exhibits are attached hereto and incorporated by reference into this Contract:

<b>Document</b>	<b>Description</b>
Exhibit A	General Description of Services
Exhibit B	City Supported Services
Exhibit C	Contract Charges
Exhibit D	Budget
Exhibit E	Hourly Rate Charges
Exhibit F	PCC Chapter 23.10 & implementing administrative regulations

I. SCOPE OF BOLI SERVICES

BOLI shall provide those services set out in Exhibit A hereto. BOLI shall achieve and report on the following Performance Measures:

- A. Provide technical assistance to employers as agreed upon in the Contract;

- B. Process complaints alleging a violation of the Code & Regulations to (1) dismissal or (2) Substantial Evidence Determination (CRD) within 180 days of filing or in the case of CRD complaints, within 180 days unless impracticable. BOLI's impracticability determination shall be documented in the file and reported in writing to both the BOLI and City Contract Managers; and
- C. Ensure that 100% of the complaints processed meet BOLI's standards of quality for processing of CRD complaints, and providing technical assistance.

## II. SCOPE OF CITY SERVICES

To assist BOLI in carrying out its obligations hereunder, the City shall perform the services set out in Exhibit B hereto.

## III. REIMBURSEMENT OF EXPENSES

The City shall pay BOLI for work performed under this Contract as set out in Exhibit C hereto. The payment shall be full reimbursement for work performed, for services rendered, and for all labor, materials, supplies, equipment, and incidentals necessary to perform the work and services. Payment shall be made upon submission of a detailed invoice of expenses.

It is agreed that total reimbursement under this Contract shall not exceed Twenty-Five Thousand Dollars (\$25,000).

## IV. EARLY TERMINATION

- A. The City and BOLI, by mutual written agreement, may terminate the intake of new cases under this Contract at any time, and technical assistance to employers.
- B. Either party may terminate the intake of new cases and technical assistance to employers under this Contract upon thirty (30) days written notice to the other party.
- C. Nothing herein shall operate as a bar to termination of the Contract in the event that either party is found to lack the legal capacity to perform under the Contract.

## V. CITY'S OPTION TO UNDERTAKE ENFORCEMENT

The City reserves the right to undertake enforcement of complaints filed under the Code & Regulations. Such enforcement will be discussed and planned in advance with BOLI so that coordination is possible.

## VI. BREACH OF CONTRACT

- A. The failure of either party to perform any substantial obligation under the Contract, except as provided in subsection B of this section shall constitute a breach of this Contract.
- B. Any failure to perform a substantial obligation under the Contract shall not constitute a breach of this Contract if the failure arises out of causes beyond the party's control and without its fault or negligence. Should either BOLI or the City fail to perform because of circumstances described in this subsection, BOLI and the City shall make a mutually acceptable revision in the scope of services or compensation sections of this Contract.

## VII. LEGAL SERVICES

CRD, APU and Technical Assistance may consult with the City Attorney about matters related to interpretation and application of the Code & Regulations. The City may request to appear as a party in a contested case proceeding to respond to legal issues. BOLI will not be charged for the City Attorney's services described in this section. If a complaint under the Code & Regulations results in a civil or appellate action in court, the City Attorney will provide legal services as allowed by law. Should the law prevent the City Attorney from providing legal services, the City and BOLI in consultation shall determine whether to respond to the action using the services of the Oregon Department of Justice. BOLI shall not bear any legal costs or fees arising out of this Contract for processing complaints, prosecuting contested cases or responding to civil or appellate actions resulting from complaints. When BOLI requires legal services for enforcement of complaints arising solely under the Code & Regulations against the City as respondent or in relation to records confidentiality under ORS 192.001 to 192.505, the City shall be liable for BOLI's expense.

## VIII. REPORTING REQUIREMENTS

BOLI shall submit quarterly reports on or before September 30, 2016, December 31, 2016, March 31, 2017 and an end of contract year by June 30, 2017.

## IX. GENERAL CONTRACT PROVISIONS

- A. **NON-DISCRIMINATION.** In carrying out activities under this Contract, BOLI shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, age, disability, familial status or national origin. BOLI shall take affirmative actions to insure that employees are treated without regard to their race, color, religion, sex, sexual orientation, age, disability, familial status or national origin. Such action shall include but not be limited to, the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. BOLI shall post in conspicuous places, available to employees and applicants for employment, notices provided by the City setting forth the provisions of this nondiscrimination clause. BOLI shall state that all qualified applicants will

receive consideration for employment without regard to race, color, religion, sex, or national origin. BOLI shall incorporate the foregoing requirements of this paragraph in all of its contracts for work funded under this IGA, except contracts governed by Section 104 of Executive Order 11246. BOLI will comply with the equal employment and non-discrimination requirements of Portland City Code Sections 3.100.005 (City Policies Relating to Equal Employment Opportunity, Affirmative Action and Civil Rights), 3.100.042 (Certification of Contractors), and Chapter 23 - Civil Rights.

- B. **ACCESS TO RECORDS.** The City's duly authorized representatives shall have access to any books, general organizational and administrative information, documents, papers, and records of BOLI which are directly pertinent to this Contract, for the purpose of making audit examination, excerpts, and transcriptions. All required records must be maintained by BOLI for two (2) years after the City makes final payment and all other pending matters are closed.
- C. **MAINTENANCE OF RECORDS.** BOLI shall maintain records on a current basis to support its billings to the City. The City or its authorized representative shall have the authority to inspect, audit, and copy on reasonable notice and from time to time any records of BOLI regarding its billings or its work hereunder. BOLI shall retain these records for inspection, audit, and copying for two (2) years from the date of completion or termination of this Contract.
- D. **AUDIT OF PAYMENTS.** The City, either directly or through a designated representative, may audit the records of BOLI at any time during the period established by above.

If an audit discloses that payments to BOLI were in excess of the amount to which BOLI was entitled, then BOLI shall repay the amount of the excess to the City.

- E. **INDEMNIFICATION.**
1. Subject to the limitations of the Oregon Constitution (Article XI, Section 9) and the Oregon Tort Claims Act (ORS 30.260 through 30.300), City shall indemnify, defend, and hold harmless BOLI from and against all liability, loss, and costs arising out of, or resulting from, the acts of City, its officers, employees, and agents in the performance of this Contract.
  2. Subject to the limitations of the Oregon Constitution (Article XI, Section 7) and the Oregon Tort Claims Act (ORS 30.260 through 30.300), BOLI shall indemnify, defend, and hold harmless City from and against all liability, loss, and costs arising out of, or resulting from, the acts of BOLI, its officers, employees, and agents in the performance of this Contract.

- F. **WORKERS' COMPENSATION INSURANCE.**

1. BOLI, its subcontractors, if any, and all employers working under this Contract, are subject employers under the Oregon Workers' Compensation law and shall comply with ORS 656.017, which requires them to provide workers' compensation coverage for all their subject workers. A certificate of insurance, or copy thereof, shall be attached to this Contract and shall be incorporated herein and made a term and part of this Contract. BOLI further agrees to maintain workers' compensation insurance coverage for the duration of this Contract.
2. BOLI may elect to self-insure any part(s) of this coverage. In the event BOLI elects to self-insure, BOLI agrees to provide proof of coverage to the City.

**G. LIABILITY INSURANCE.**

1. BOLI shall maintain public liability and property damage insurance that protects BOLI and the City and its officers, agents, and employees from any and all claims, demands, actions, and suits for damage to property or personal injury, including death, arising from BOLI's work under this Contract. The insurance shall provide coverage for not less than \$1,000,000 for personal injury to each person, \$1,000,000 for each occurrence, and \$1,000,000 for each occurrence involving property damages; or a single limit policy of not less than \$1,000,000 covering all claims per occurrence. The limits of the insurance shall be subject to statutory changes as to maximum limits of liability imposed on municipalities of the State of Oregon during the term of the Contract. The insurance shall be without prejudice to coverage otherwise existing and shall name as additional insureds the City and its officers, agents, and employees. Notwithstanding the naming of additional insureds, the insurance shall protect each insured in the same manner as though a separate policy had been issued to each, but nothing herein shall operate to increase the insurer's liability as set forth elsewhere in the policy beyond the amount or amounts for which the insurer would have been liable if only one person or interest had been named as insured. The coverage must apply as to claims between insureds on the policy. The insurance shall provide that it shall not terminate or be canceled without 30 days written notice first being given to the City Auditor. If the insurance is canceled or terminated prior to completion of the Contract, BOLI shall provide a new policy with the same terms. BOLI agrees to maintain continuous, uninterrupted coverage for the duration of the Contract. The insurance shall include coverage for any damages or injuries arising out of the use of automobiles or other motor vehicles by BOLI
2. BOLI shall maintain on file with the City Auditor a certificate of insurance certifying the coverage required under subsection (a). The adequacy of the insurance shall be subject to the approval of the City Attorney. Failure to

maintain liability insurance shall be cause for immediate termination of this Contract by the City.

In lieu of filing the certificate of insurance required herein, BOLI shall furnish a declaration that BOLI is self-insured for public liability and property damage for a minimum of the amounts set forth in ORS 30,270.

- H. **SUBCONTRACTING AND ASSIGNMENT.** BOLI shall not subcontract its work under this Contract, in whole or in part, without the written approval of the City. BOLI shall require any approved subcontractor to agree, as to the portion subcontracted, to fulfill all obligations of the Contract as specified in this Contract. Notwithstanding City approval of a subcontractor, BOLI shall remain obligated for full performance hereunder, and the City shall incur no obligation other than its obligations to BOLI hereunder. BOLI agrees that if subcontractors are employed in the performance of this Contract, BOLI and its subcontractors are subject to the requirements and sanctions of ORS Chapter 656, Workers' Compensation. BOLI shall not assign this Contract in whole or in part or any right or obligation hereunder, without prior written approval of the City.

Subcontractors shall be responsible for adhering to all regulations cited within this Contract.

- I. **INDEPENDENT CONTRACTOR STATUS.** BOLI is engaged as an independent contractor, and BOLI will be responsible for any federal, state, or local taxes and fees applicable to payments hereunder.

BOLI and its subcontractors and employees are not employees of the City and are not eligible for any benefits through the City, including without limitation, federal social security, health benefits, workers' compensation, unemployment compensation, and retirement benefits.

- J. **REPORTING REQUIREMENTS.** BOLI shall report on its activities in a format and by such times as prescribed by the City.

- K. **OREGON LAWS AND FORUM.** This Contract shall be construed according to the laws of the State of Oregon.

Any litigation between the City and BOLI arising under this Contract or out of work performed under this Contract shall occur, if in the state courts, in the Multnomah County Circuit Court and if in the federal courts, in the United States District Court for the State of Oregon.

- L. **COMPLIANCE WITH LAWS.** In connection with its activities under this Contract, BOLI shall comply with all applicable federal, state, and local laws and regulations.

- M. **SEVERABILITY.** If any provision of this Contract is found to be illegal or unenforceable, this Contract nevertheless shall remain in full force and effect and the provision shall be stricken.
- N. **INTEGRATION.** This Contract, including any exhibits attached to it, is the final expression of, and contains the entire Contract between the City and BOLI with respect to the subject matter of the Contract and supersedes any prior written or oral discussions or contracts with respect to such subject matter.
- O. **PROGRAM AND FISCAL MONITORING.** The City shall monitor this Contract on a regular basis to assure contract compliance. Such monitoring may include, but is not limited to, on site visits, telephone interviews, and review of required reports and will cover both programmatic and fiscal aspects of this Contract. The frequency and level of monitoring will be determined by the City Contract Manager.
- P. **PERIOD OF AGREEMENT AND CONTRACT.** The obligations and duties of this Contract shall be binding on the Subrecipient during any period the Subrecipient has control of funds or program income under this Contract, or during any period of affordability relative to any project funded under this Contract.
- Q. **EXECUTION IN COUNTERPARTS.** This Contract may be signed in two (2) or more counterparts, each of which shall be deemed an original, and which, when taken together, shall constitute one and the same Contract. The parties agree the City and BOLI may execute this Contract, including any Contract amendments, by electronic means, including the use of electronic signatures.



**EXHIBIT A****General Description of Services**

BOLI shall provide administrative enforcement of the Code & Regulations. This includes enforcement of complaints filed against the City itself.

**A. ENFORCEMENT-GENERAL**

1. The City will fund BOLI to enforce complaints filed for violations of the Code & Regulations
2. Through its Civil Rights Division (CRD), BOLI shall process complaints alleging violations of the Code & Regulations.

**B. TECHNICAL ASSISTANCE**

1. BOLI shall provide technical assistance to employers, which shall include answering employer calls and emails, and providing training on the Code & Regulations.
2. At its discretion, Technical Assistance may consult with the City Attorney about matters related to interpretation of the Code & Regulations.

**EXHIBIT B**

The City shall assist BOLI in carrying out its obligations by providing access to staff support as well as those services discussed in the Contract and exhibits, including:

- A. BOLI may consult with the City Attorney about matters related to interpretation and enforcement of the ordinance.
- B. The City may request to appear as a party in a contested case proceeding.
- C. If a complaint under the ordinance results in a civil or appellate action, the City Attorney's office will provide legal services as allowed by law.

**EXHIBIT C****CONTRACT CHARGES****Detailed Quarterly Billing Statements:**

BOLI shall prepare a detailed quarterly statement of charges specifying the individual cases for which payment is sought, with a breakdown of charges and reporting as described in Exhibit D. BOLI shall also provide quarterly reports specifying the technical assistance services provided including, the number and types of phone calls, emails, editing and distribution of materials to employers, and leave trainings incorporating the Ordinance.

**Contract Charges:**

BOLI will charge at an hourly rate as detailed in Exhibit D and E for investigating complaints in the Civil Rights Division and for processing Contested Cases in the Administrative Prosecution Unit as described in Exhibit A. This charge includes administrative closures due to lack of Jurisdiction, uncooperative Complainant, bankruptcy of Respondent, etc.

BOLI will provide technical assistance to employers for a flat rate of \$5,000 over the contract period.

**Contested Case Administrative Expenses:**

BOLI will charge actual costs for any services required by law for Contested Cases including, when necessary, court certified interpreters and court-certified transcriptions of hearing audio records for the Oregon Court of Appeals.

**EXHIBIT D****BUDGET****BUDGET BREAKDOWN**

<b>Scope</b>	<b>Hourly Costs</b>	<b>Budget Maximum</b>
Program Delivery – Processing of Complaints Civil Rights Division Cases; Reporting*	As set out in Exhibit E	Combined Total **
Administrative prosecution Unit – Contested Cases; Reporting*	As set out in Exhibit E	Combined Total **
Sub-Total Budget		\$20,000
Technical Assistance/Training, materials and Employer Hotline; Reporting: ***		\$5,000
<b>Total Budget****</b>		<b>\$25,000</b>

\* Quarterly Invoicing, due on or before September 30, 2016, December 31, 2016, March 31, 2017 and an end of contract year by June 30, 2017, will include number and types of cases; staff time.

\*\* CRD and APU combined time on all cases will not exceed \$25,000 over the period of the contract.

\*\*\* Reporting due on same schedule as CRD quarterly invoicing and will include number and types of phone calls, emails, editing and distribution of materials to employers and trainings incorporating the Code & Regulations.

\*\*\*\* Total budget not to exceed \$25,000.

**EXHIBIT E****BOLI HOURLY RATES****Civil Rights Division****Office Specialist 2**

	Monthly Base Rate	Hourly Rate	OPE	Total Hourly Rate
2016/17	\$3225	\$18.61	\$10.24	\$28.85

**Civil Rights Field Rep 1**

	Monthly Base Rate	Hourly Rate	OPE	Total Hourly Rate
2016/17	\$4079	\$23.53	\$12.94	\$36.47

**Civil Rights Field Rep 2**

	Monthly Base Rate	Hourly Rate	OPE	Total Hourly Rate
2016/17	\$4697	\$27.10	\$14.91	\$42.01

**Principal Exec/Mgr C**

	Monthly Base Rate	Hourly Rate	OPE	Total Hourly Rate
2016/17	\$6226	\$35.93	\$19.76	\$55.69

**Administrative Process (Contested Cass)****Administrative Law Judge 3**

	Monthly Base Rate	Hourly Rate	OPE	Total Hourly Rate
2016/17	\$9179	\$52.95	\$29.12	\$82.07

**Chief Prosecutor**

	Monthly Base Rate	Hourly Rate	OPE	Total Hourly Rate
2016/17	\$8742	\$50.43	\$27.74	\$78.17

**Administrative Processor**

	Monthly Base Rate	Hourly Rate	OPE	Total Hourly Rate
2016/17	\$6255	\$36.08	\$19.84	\$55.92

**Contested Case Hearing Coordinator**

	Monthly Base Rate	Hourly Rate	OPE	Total Hourly Rate
2016/17	\$3896	\$22.48	\$12.36	\$34.84

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**EXHIBIT F**

**[Final versions of Code & Regulations]**