



**PERSONAL SERVICES AGREEMENT
FOR BACKFLOW ASSEMBLY TESTING, REPAIR,
AND REPLACEMENT SERVICES**

This Personal Services Agreement for Backflow Assembly Testing, Repair, and Replacement Services (the "Agreement"), is made and entered into by and between Oak Lodge Water Services Authority, a joint water and sanitary authority organized under ORS Chapter 450 ("OLWS") and _____, a _____ ("Contractor").

RECITALS

WHEREAS, OLWS desires to engage Contractor for backflow assembly testing, repair, and replacement services (the "Work" or the "Services"); and

WHEREAS, Contractor is willing and qualified to perform the requested Services;

NOW, THEREFORE, in consideration of the promises and covenants contained herein, the Parties agree as follows:

1. Contractor's Scope of Services

Contractor shall perform the Services relevant to the Project in accordance with the terms and conditions set forth herein, and as provided in the Scope of Services, which is attached hereto as **Exhibit A** and by this reference is made a part of this Agreement.

2. Effective Date and Duration

This Agreement shall become effective as of July 1, 2023, and shall automatically expire on June 30, 2027, unless earlier terminated by OLWS or extended by mutual written agreement of both parties.

3. Contractor's Fee and Payment

A. Fees

OLWS shall pay Contractor for the Services performed under this Agreement in accordance with the rates and fee schedule set forth in **Exhibit B**.

B. Payment Schedule

Payments shall be made upon receipt of invoices based upon the work completed. Invoices shall be submitted by the Contractor periodically, but not more frequently than bi-weekly. Payment by OLWS shall release OLWS from any further obligation for payment to the Contractor for service or services performed or expenses incurred as of the date of the statement of services. Payment shall be made only for work actually completed as of the date of invoice. Payment shall not be considered acceptance or approval by OLWS of any work or waiver of any defects therein.

D. Cost Records

The Contractor shall furnish cost records for all invoices to substantiate all charges. For such purposes, the books of account of the Contractor shall be subject to audit by OLWS. The

Contractor shall complete work and cost records for all billings in accordance with generally accepted accounting principles.

E. Contract Identification

The Contractor shall furnish to OLWS its employer identification number, as designated by the Internal Revenue Service, or social security number, as OLWS deems applicable.

F. Payment – General

- 1)** Contractor shall pay to the Department of Revenue all sums withheld from employees pursuant to ORS 316.167. Contractor represents and warrants that Contractor has complied with, and will continue to comply with, all Oregon state and local tax laws before the execution of this Agreement, and throughout the term of this Agreement. Failure to comply with this provision is a breach and OLWS may terminate this Agreement for cause.
- 2)** Contractor shall pay employees at least time and a half pay for all overtime worked in excess of 40 hours in any one week, except for individuals who are excluded under ORS 653.010 to 653.261 or under 29 USC sections 201 to 209 from receiving overtime. Contractor shall comply with ORS 652.220 (prohibition on discriminatory wage rates). Compliance with such provision is a material element of this Agreement. Failure to comply with this provision is a breach and OLWS may terminate this Agreement for cause.
- 3)** Contractor shall promptly, as due, make payment to any person, co-partnership, association, or corporation, furnishing medical, surgical and hospital care or other needed care and attention incident to sickness or injury to the employees of Contractor or all sums which Contractor agrees to pay for such services and all moneys and sums which Contractor collected or deducted from the wages of employees pursuant to any law, contract, or agreement for the purpose of providing or paying for such service.
- 4)** Contractor shall make payments promptly, as due, to all persons supplying services or materials for work covered under this Agreement. Contractor shall not permit any lien or claim to be filed or prosecuted against OLWS on any account of any service or materials furnished.
- 5)** If Contractor fails, neglects, or refuses to make prompt payment of any claim for labor, materials, or services furnished to Contractor, sub-consultant, or subcontractor by any person as such claim becomes due, OLWS may pay such claim and charge the amount of the payment against funds due or to become due to the Contractor. The payment of the claim in this manner shall not relieve Contractor or its surety from obligation with respect to any unpaid claims.
- 6)** Contractor shall comply with all federal, state, and local laws, regulations, executive orders, and ordinances applicable to the work under this Agreement, including, without limitation, ORS 279B.020 (labor hours), ORS 279B.220 (payment conditions), ORS 279B.230 (medical care and workers' compensation), ORS 279B.235 (labor hours and pay rates), ORS 279B.225 (salvaging of materials) and ORS 279B.045 (tax laws).

- 7) Contractor shall maintain, at its own expense, worker's compensation insurance for all subject workers as required by ORS Chapter 656 and meeting the minimum requirements therein.

4. Ownership of Plans and Documents: Records

- A. OLWS shall be furnished, at no additional cost to OLWS, copies of all backflow tests performed, and copies of all permits and inspections by Clackamas County. Upon request by OLWS, Contractor shall make available for inspection any field notes, design notes, and original drawings of the repair plans. OLWS shall have unlimited authority to use the materials received from the Contractor in any way OLWS deems necessary. Any use, re-use, or alteration of any materials other than as contemplated by the applicable Scope of Services shall be at OLWS's sole risk, unless written permission has been received from Contractor prior to any such use.
- B. Upon request by Contractor, OLWS shall make copies for the use of Contractor and without cost to Contractor, of all of OLWS maps, records, laboratory tests, or other data pertinent to the work to be performed by Contractor pursuant to this Agreement, and OLWS shall also make available any other maps, records, or other materials available to OLWS from any other public agency or body.
- C. The Contractor shall furnish to OLWS, copies of all maps, records, field notes, and soil tests which were developed in the course of work for OLWS and for which compensation has been received by the Contractor, at no additional expense to OLWS except as provided for in this Agreement.

5. Assignment and Delegation

Neither party shall assign, sublet, or transfer any interest in or duty under this Agreement without the prior written consent of the other party, and no assignment shall be of any force or effect whatsoever unless and until the other party has so consented. If OLWS agrees to assignment of tasks to a subcontract, Contractor shall remain fully responsible for the negligent acts or omissions of any subcontractors and of all persons employed by them, and neither the approval by OLWS of any subcontractor or assignment, nor anything contained herein shall be deemed to create any contractual relation between any subcontractor and OLWS.

6. Contractor is an Independent Contractor

- A. OLWS's cross-connection specialist, or designee, shall be responsible for determining whether Contractor's work product is satisfactory and consistent with this Agreement, but Contractor is not subject to the direction and control of OLWS. Contractor shall be an independent contractor for all purposes and shall be entitled to no compensation other than the compensation provided for under Section 3 of this Agreement.
- B. Contractor is an independent contractor and is not an employee of OLWS. Contractor acknowledges Contractor's status as an independent contractor and acknowledges that Contractor is not an employee of OLWS for purposes of workers compensation law, public employee benefits law, or any other law. All persons retained by Contractor to provide services under this Agreement are employees or agents of Contractor and not of OLWS. Contractor acknowledges that it is not entitled to benefits of any kind to which a OLWS employee is entitled, and that it shall be solely responsible for workers compensation coverage for its employees and all other payments and taxes required by law. Furthermore, in the event that Contractor is found by a court of law or an administrative agency to be an employee of OLWS for any purpose, OLWS shall be entitled to offset compensation due, or to demand repayment of any amounts paid to Contractor under the terms of the Agreement, to the full extent of any benefits or other

remuneration Contractor receives (from OLWS or third party) as a result of said finding, and to the full extent of any payments that OLWS is required to make (to Contractor or to a third party) as a result of said finding.

- C. The undersigned Contractor hereby represents that no employee of OLWS or any partnership or corporation in which an OLWS employee has an interest, has or will receive any remuneration of any type from Contractor, either directly or indirectly, in connection with the performance of this Agreement, except as specifically declared in writing.
- D. Contractor and its employees, if any, are not active members of the Oregon Public Employees Retirement System, and are not employed for a total of 600 hours or more in the calendar year by any public employer participating in the Retirement System.
- E. Contractor certifies that it currently has an appropriate business license or will obtain one prior to delivering Services under this Agreement.
- F. Contractor is not an officer, employee, or agent of OLWS as those terms are used in ORS 30.265.

7. Indemnity

- A. OLWS has relied upon the professional ability and training of the Contractor as a material inducement to enter into this Agreement. Contractor represents to OLWS that the work under this Agreement will be performed in accordance with the professional standards of skill and care ordinarily exercised by members of the Contractor's profession under similar conditions and circumstances, as well as the requirements of applicable federal, state, and local laws. Acceptance of Contractor's work by OLWS shall not operate as a waiver or release of any right or remedy that may be available by OLWS under law. Acceptance of documents by OLWS does not relieve Contractor of any responsibility for negligent or wrongful design, replacement, and/or repair deficiencies, errors, or omissions.
- B. Contractor shall fully defend, indemnify, and hold harmless Oak Lodge Water Services Authority, its employees, board members, officers, volunteers, and agents, from any and all claims, lawsuits, demands, causes of action, liability, loss, damage, equitable relief, personal injury and/or wrongful death, whether brought by an individual or any other entity, or imposed by a court of law or by administrative action of any federal, state, or local governmental body or agency, arising out of, in any way whatsoever, any acts, omissions, negligence, or willful misconduct on the part of the Contractor, its employees, board members, volunteers, or agents. This indemnification applies to and includes, without limitation, the payment of all penalties, fines, judgements, awards, decrees, attorney's fees, and related costs and expenses, and any reimbursements to Oak Lodge Water Services Authority for any and all legal fees, expenses, and costs incurred by OLWS in connection therewith.

8. Insurance

Contractor and its subcontractors shall maintain insurance in amounts and coverage that are acceptable to OLWS in full force and effect throughout the term of this Agreement. Such insurance shall cover risks arising directly or indirectly out of Contractor's activities or work hereunder, including the operations of its subcontractors of any tier. Such insurance shall include provisions that such insurance is primary insurance with respect to the interests of OLWS and that any other insurance maintained by OLWS is excess and not contributory insurance with the insurance required hereunder.

The policy or policies of insurance maintained by the Contractor and its subcontractors shall provide at least the following limits and coverages:

- A. Commercial General Liability Insurance**
Contractor shall obtain, at Contractor's expense, and keep in effect during the term of this Agreement, Commercial General Liability Insurance AND Auto Liability Insurance covering Bodily Injury and Property Damage on an "occurrence" form. This coverage shall include Contractual Liability insurance for the indemnity provided under this Agreement and Product and Completed Operations. Such insurance shall be primary and non-contributory. The following insurance will be carried:
Coverage Limit General Aggregate AND Auto Liability: \$2,000,000 per occurrence and 3,000,000 in the Aggregate.
- B. Commercial Automobile Insurance**
Contractor shall also obtain, at Contractor's expense, and keep in effect during the term of this Agreement, Commercial Automobile Liability coverage on an "occurrence" form, including coverage for all owned, hired, and non-owned vehicles. The Combined Single Limit per occurrence shall not be less than \$2,000,000.
- C.** Workers' Compensation Insurance the Contractor, its subcontractors, if any, and all employers providing work, labor, or materials under this Agreement who are subject employers under the Oregon Workers' Compensation Law shall comply with ORS 656.017, which requires them to provide workers' compensation coverage that satisfies Oregon law for all their subject workers.

Out of State Contractors must provide workers' compensation coverage for their workers that complies with ORS 656.126. This shall include Employer's Liability Insurance with coverage limits of not less than \$500,000 each accident.
- D. Additional Insured Provision**
The Commercial General Liability Insurance Policy and Automobile Policy shall name OLWS, its officers, directors, and employees as additional insureds with respect to any liabilities that occur in connection with this Agreement.
- E. Notice of Cancellation or Non-Renewal**
Contractor is responsible to provide OLWS at least 30 days' written notice prior to any cancellation, material change, or intent to not renew insurance coverage. Any failure to comply with this provision will not affect the insurance coverage owed to OLWS under this Agreement. The 30 days' notice of cancellation provision shall be physically endorsed onto the policy.
- F. Insurance Carrier Rating**
Coverage provided by the Contractor must be underwritten by an insurance company or Pool deemed acceptable by OLWS. OLWS reserves the right to reject all or any insurance carrier(s) with an unacceptable financial rating.
- G. Certificates of Insurance**
As evidence of the insurance coverage required by the Agreement, the Contractor shall furnish a Certificate of Insurance to OLWS upon execution of this Agreement. No Services shall be performed until the required certificates have been received and approved by OLWS. A renewal certificate will be sent to the address below at least 30 days prior to coverage expiration.

Certificates of Insurance should read "Insurance certificate pertaining to contract for Backflow Assembly Testing, Repair, and Replacement Services. OLWS, its officers, directors, and employees shall be added as additional insureds with respect to this Agreement. "Contractor insurance coverage is primary" shall be written into the description portion of the certificate.

H. Primary Coverage Clarification

The parties agree that Contractor's coverage shall be primary to the extent permitted by law. The parties further agree that other insurance maintained by OLWS is excess and is not contributory insurance for any reason regarding the insurance required in this section.

I. Cross-Liability Clause

A cross-liability clause or separation of insureds clause will be included in general liability.

Contractor's insurance policy shall contain provisions that such policies shall not be canceled or their limits of liability reduced without 30 days' prior notice to OLWS. A copy of each insurance policy, certified as a true copy by an authorized representative of the issuing insurance company, (or alternatively, at the discretion of OLWS, a certificate in a form satisfactory to OLWS) certifying to the issuance of such insurance shall be forwarded to:

Contract No. _____
OLWS Attn: Dave Seifert
Business Phone: 503-353-4230
Business Fax: 503-653-0586
14611 SE River Road
Oak Grove, Oregon 97267

Such policies or certificates must be delivered prior to commencement of the Work. Thirty days' cancellation notice shall be provided to OLWS by mail to the name at the address listed above in event of cancellation or non-renewal of the insurance.

The procuring of such required insurance shall not be construed to limit Contractor's liability hereunder. Notwithstanding said insurance, Contractor shall be obligated for the total amount of any damage, injury, or loss to the extent caused by negligence or wrongful acts in the performance of the Services with this Agreement.

9. Termination Without Cause

At any time and without cause, OLWS shall have the right, in its sole discretion, to terminate this Agreement by giving 10 days' written notice to Contractor. If OLWS terminates the Agreement pursuant to this paragraph, it shall pay Contractor for Services rendered through the effective date of termination.

10. Breach and Remedy

Upon breach of this Agreement, the parties shall have all rights and remedies provided by law or under this Agreement. In addition, in the event of a breach of this Agreement by Contractor, OLWS may complete the work or remedy the issue either itself, by agreement with another contractor, or by a combination thereof. OLWS may deduct the cost of completing the work or remedying the issue identified in the notice of breach from the remaining unpaid balance of the fee(s) owed to Contractor under this or other Agreements, if any.

11. Non-Waiver

The failure of either party to insist upon or enforce strict performance by the other party of any of the terms of this Agreement, or to exercise any rights hereunder, shall not be construed as a waiver or relinquishment of its rights to assert or rely upon such terms or rights on a future occasion.

12. Method and Place of Giving Notice, Submitting Bills, and Making Payments

All notices, bills, and payments shall be made in writing and may be given by personal delivery, mail, email or by fax. Payments may be made by personal delivery, mail, or electronic transfer. The following addresses shall be used to transmit notices, bills, payments, and other information:

OLWS	[Contractor]
Attn: Dave Seifert	Attn:
14496 SE River Road Oak Grove, Oregon 97267	Address:
Phone: 503-353-4230	Phone:
Fax: 503-653-1973	Fax:
Email Address: dave@olwsd.org	Email Address:

and when so addressed, shall be deemed given upon deposit in the United States mail, postage prepaid, or when so faxed, shall be deemed given upon successful fax. In all other instances, notices, bills, and payments shall be deemed given at the time of actual delivery. Changes may be made in the names and addresses of the person to whom notices, bills, and payments are to be given, by giving written notice pursuant to this paragraph.

13. Merger

This writing is intended both as a final expression of the Agreement between the parties with respect to the included terms, and as a complete and exclusive statement of the terms of the Agreement. No modification of this Agreement shall be effective unless and until it is made in writing and signed by both parties.

14. Force Majeure

Neither OLWS nor Contractor shall be considered in default because of any delays in completion and responsibilities hereunder due to causes beyond the control and without fault or negligence on the part of the parties so disabled, including but not restricted to, an act of God or of a public enemy, civil unrest, volcano, earthquake, fire, flood, epidemic, quarantine restriction, area-wide strike, freight embargo, unusually severe weather, or delay of subcontractor or supplies due to such cause; provided that the parties so disabled shall within ten days from the beginning of such delay, notify the other party in writing of the cause of delay and its probable extent. Such notification shall not be the basis for a claim for additional compensation. Each party shall, however, make all reasonable efforts to remove or eliminate such a cause of delay or default and shall, upon cessation of the cause, diligently pursue performance of its obligations under the Agreement.

15. Non-Discrimination

Contractor agrees to comply with all applicable requirements of federal and state civil rights and rehabilitation statues, rules, and regulations. Contractor also shall comply with the Americans with Disabilities Act of 1990, as amended, ORS 659A.142, and all regulations and administrative rules established pursuant to those laws.

16. Errors

If requested by OLWS, Contractor shall perform such additional work as may be deemed necessary by OLWS, to correct negligent errors in the Work required under this Agreement, without undue delays and without additional cost.

17. Governing Law

The provisions of this Agreement shall be construed in accordance with the provisions of the laws of the State of Oregon. Any action or suits involving any question arising under this Agreement must be brought in the appropriate court of the State of Oregon.

18. Conflict Between Terms

Should there be a conflict between the terms of this Agreement and any proposal submitted by Contractor in connection with this Agreement, the terms of this Agreement shall control and nothing herein shall be considered as an acceptance of the terms of any conflicting proposal.

19. Access to Records

OLWS shall have access to such books, documents, papers, and records of Contractor that are pertinent to this Agreement for the purpose of making an audit, examination, copies, excerpts, and transcripts.

20. Audit

Contractor shall maintain records to help ensure conformance with the terms and conditions of this Agreement, and to help ensure adequate performance and accurate expenditures within the contract period. Contractor agrees to permit OLWS, the State of Oregon, the federal government, and their duly authorized representatives, to audit all records pertaining to this Agreement for such purpose.

21. Severability

In the event any provision or portion of this Agreement is held to be unenforceable or invalid by a court of competent jurisdiction, the validity of the remaining terms and provisions of the Agreement shall not be affected, and the remaining terms and provisions of the Agreement shall be in full force and effect.

22. Complete Agreement

This Agreement and the attached exhibits constitute the entire Agreement between the parties. No waiver, consent, modification, or change of terms of this Agreement shall bind either party, unless in writing and signed by both parties. Such waiver, consent, modification, or change, if made, shall be effective only in the specific instances and for the specific purpose given. There are no other understandings, agreements, or representations, oral or written, regarding the subject matter of this Agreement. Contractor, by the signature of its authorized representative, hereby acknowledges that Contractor has read this Agreement, understands it, and agrees to be bound by its terms and conditions.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed by the undersigned duly authorized representatives of each party, effective as of the date first written above.

OAK LODGE WATER SERVICES AUTHORITY

Signature

Print Name & Title

Contract No. _____

Date

[CONTRACTOR]

Signature

Print Name & Title

Date

EXHIBIT A SCOPE OF WORK

The work includes the testing, repair, and/or replacement of backflow assemblies, and reporting the findings to OLWS cross connection control staff. All work that is assigned must be completed within 30 days. The Proposer shall be responsible for supplying all equipment, parts, and materials to complete the work.

Proposers shall demonstrate their qualifications in the following specialty areas:

- The Proposer shall be responsible for acquainting themselves with the existing backflow and cross connection program.
- Provide information regarding how and when testing, repairs, installs and replacements would be accomplished.
- Provide information regarding how and when test results and work order history will be reported to OLWS. Submitting electronic test reports and electronic communication will receive preferential treatment in terms of points.
- Recommend a means for tracking and repairing any device which has failed, including an itemized schedule of cost for these repairs.
- The Proposer shall be responsible to provide a copy of the test report to OLWS and a copy to the homeowner.
- Proposer will leave a door hanger notifying the customer that the work has been completed.
- Proposer shall include in the proposal the testing cost for assemblies from ¾" – 12" in size, along with repair cost for these sizes also. OLWS standard for replacements and repairs is low lead brass and PEX Piping.
- Proposer will communicate with the customer regarding any arrangements needed for the repair.
- The Proposer shall include a price sheet for any extra services, such as but not limited to vault entry, permits, pump charges, boxes, and backfill material.
- Provide information regarding what kind of repair parts your testers carry and if they are qualified to repair assemblies on the same trip out if they fail.
- The Proposer shall recommend a means for handling repairs, replacements, and installation on main water lines and also on irrigation lines, with a price structure that shows the differences in this work. Identify work required to be completed by a licensed plumber versus work that can be completed by a landscaper/tester.
- The Proposer is responsible to obtain and pay for any necessary permits with Clackamas County.
- The Proposer shall submit a list of three references that include water purveyors.

Oak Lodge Water Services Responsibilities

- Provide all door hangers needed
- Provide a list of owners and address where work is to be completed

Contract No. _____

**EXHIBIT B
RATES AND FEES**