



**PERSONAL SERVICES AGREEMENT  
FOR ELECTRONIC RECORDS MANAGEMENT  
SYSTEM (ERMS)**

This personal services agreement for an electronic records management system (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 \_\_\_\_\_ (“Vendor”).

**RECITALS**

**WHEREAS**, OLWS desires to engage Vendor to test and implement a cloud-based electronic records management system and to provide continuous technical support and software maintenance for the same (the “Services”); and

**WHEREAS**, Vendor 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. Vendor’s Scope of Services**

Vendor shall perform the Services in accordance with the terms and conditions set forth herein, and as the Scope of Services are set forth in this Agreement, the OLWS RFP for Electronic Records Management System (issued February 2023), and the Vendor’s proposal in response to the RFP, each of which are incorporated herein. If there are any conflicting terms among the RFP, Proposal, and this Agreement, this Agreement shall govern.

**2. Effective Date and Duration**

The Parties expressly acknowledge and agree that this Agreement is contingent on the OLWS Board of Directors appropriating the funds required for the Services under this Agreement, for each fiscal year of the Agreement. If such funding is approved, this Agreement shall become effective as of July 1, 2023, and shall continue for a period of three years (the “Initial Term”), after which the Agreement shall automatically expire unless earlier terminated or renewed by OLWS. This Agreement may be renewed for an additional, three-year term (the “Renewal Term”) by written notification by OWLS of the intent to renew prior to the expiration of the Initial Term.

**3. Vendor’s Fee and Payment**

**A. Fees**

OLWS shall pay Vendor for the Services performed under this Agreement in accordance with the rates and fees schedule set forth in **Exhibit A**. The maximum, not-to-exceed amount paid by OLWS under this Agreement shall be \$150,000. OLWS shall not pay compensation exceeding this amount without prior budgetary approval from the Board of Directors or authorized designee.

**B. Payment Schedule**

Payments shall be made upon the schedule and fee terms agreed upon by the Parties as identified in **Exhibit A**. Payment shall not be considered acceptance or approval by OLWS of any work or waiver of any defects therein. If this Agreement is terminated, for any reason, OLWS shall be responsible for payment only through the effective date of termination.

**D. Cost Records**

The Vendor shall furnish cost records for all invoices to substantiate all charges. For such purposes, the books of account of the Vendor shall be subject to audit by OLWS. The Vendor shall complete work and cost records for all billings in accordance with generally accepted accounting principles.

**E. Contract Identification**

The Vendor 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)** Vendor shall pay to the Department of Revenue all sums withheld from employees pursuant to ORS 316.167. Vendor represents and warrants that Vendor 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)** Vendor 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. Vendor 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)** Vendor 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 Vendor or all sums which Vendor agrees to pay for such services and all moneys and sums which Vendor 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)** Vendor shall make payments promptly, as due, to all persons supplying services or materials for work covered under this Agreement. Vendor 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 Vendor fails, neglects, or refuses to make prompt payment of any claim for labor, materials, or services furnished to Vendor, 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 Vendor. The payment of the claim in this manner shall not relieve Vendor or its surety from obligation with respect to any unpaid claims.

- 6) Vendor 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) Vendor 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. Records

- A. Vendor understands that OLWS is a public entity that is subject to Oregon Public Records Laws under ORS Chapter 192. Vendor agrees to comply with Oregon Public Records Laws and to coordinate with OLWS, upon any OLWS's request, regarding the disclosure or withholding from disclosure any such records or portions of records that are subject to Oregon Public Records Laws, at the direction of the OLWS representative. The Parties agree OLWS shall be the sole owner and custodian of all OLWS records, even those records that are stored in a cloud storage system. Vendor shall direct any public records requests that it may receive to the OLWS representative within 24 hours of receipt. Vendor shall maintain confidentiality for public records that are exempt from public disclosure.
- B. Vendor agrees that it will not disclose or withhold any record to any person (as that term is defined under ORS 192.311(3)) without the express, written directive from the OLWS representative to do so. Vendor agrees that it will not permanently destroy or erase any record without the express written directive from the OLWS representative to do so.
- C. Vendor agrees to comply with all applicable state and local laws in performing the Services under this Agreement, including the regulations under OAR Chapter 166, Division 17 concerning electronic records, including digitization standards, retention schedules, security standards, confidentiality, operability standards, maintenance and backup standards. Vendor shall manage OLWS records in compliance with all rules of OAR Chapter 166, Division 17, and to return all electronic data files and indexing information to OLWS at the expiration of this Agreement (for any reason) or if Vendor fails to comply with a regulation and OLWS directs Vendor to return all electronic data files and indexing information.
- D. Vendor agrees to retain OLWS records for the applicable retention period for OLWS records according to the schedules approved by the State Archivist, and to ensure access by OLWS to all records for the entire length of the retention period. Vendor agrees to ensure that non-permanent electronic public records are destroyed at the end of their applicable retention period, and to work with the OLWS representative on a destruction schedule.
- E. The Records provisions under this Paragraph 4 shall survive the termination of 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 the assignment of tasks to a subcontractor, Vendor shall remain fully responsible for the negligent acts or omissions of any subcontractor 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. Vendor is an Independent Vendor**

- A.** The OLWS Representative, as designed in the RFP, shall be responsible for determining whether Vendor's work product is satisfactory and consistent with this Agreement, but Vendor is not subject to the direction and control of OLWS. Vendor 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.** Vendor is an independent Vendor and is not an employee of OLWS. Vendor acknowledges Vendor's status as an independent contractor and acknowledges that Vendor is not an employee of OLWS for purposes of workers compensation law, public employee benefits law, or any other law. All persons retained by Vendor to provide services under this Agreement are employees or agents of Vendor and not of OLWS. Vendor 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 Vendor 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 Vendor under the terms of the Agreement, to the full extent of any benefits or other remuneration Vendor 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 Vendor or to a third party) as a result of said finding.
- C.** The undersigned Vendor 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 Vendor, either directly or indirectly, in connection with the performance of this Agreement, except as specifically declared in writing.
- D.** Vendor 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.** Vendor certifies that it currently has an appropriate business license or will obtain one prior to delivering Services under this Agreement, for any licenses that may be required under any applicable local, state, or federal law, to perform the Services.
- F.** Vendor 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 Vendor as a material inducement to enter into this Agreement. Vendor represents to OLWS that the Services under this Agreement will be performed in accordance with the professional standards of skill and care ordinarily exercised by members of the Vendor's profession under similar conditions and circumstances, as well as the requirements of applicable federal, state, and local laws. Acceptance of Vendor'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 Vendor of any responsibility for negligent or wrongful design, replacement, and/or repair deficiencies, errors, or omissions.

- B.** Vendor 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 Vendor, 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**

Vendor 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 Vendor'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 Vendor and its subcontractors shall provide at least the following limits and coverages:

**A. Commercial General Liability Insurance**

Vendor shall obtain, at Vendor'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**

Vendor shall also obtain, at Vendor'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 Vendor, 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 Vendors 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**

Vendor 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 Vendor 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 Vendor 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 Electronic Records Management System Services. OLWS, its officers, directors, and employees shall be added as additional insureds with respect to this Agreement. "Vendor insurance coverage is primary" shall be written into the description portion of the certificate.

**H. Primary Coverage Clarification**

The parties agree that Vendor'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.

Vendor '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: Laural Casey  
Business Phone: 503-353-4227  
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 Vendor’s liability hereunder. Notwithstanding said insurance, Vendor 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**

At any time and without cause, OLWS shall have the right, in its sole discretion, to terminate this Agreement by giving 90 days’ written notice to Vendor. If OLWS terminates the Agreement pursuant to this paragraph, it shall pay Vendor for Services rendered only through the effective date of termination. If this Agreement is terminated, for any reason, Vendor shall return all electronic data files and indexing information promptly to OLWS or to another vendor if at OLWS’s direction. Regardless of the reason for termination, at OLWS’s request, Vendor shall provide Services sufficient to facilitate a successful transfer of electronic management files, data files, indexing information, and all other aspects of a records management system to OLWS or to another vendor or vendor’s system, at OLWS’s request. Vendor shall comply with the provisions of the *Records* Paragraph 4 of this Agreement in the event 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 Vendor, OLWS may complete the Services or remedy the issue itself, by agreement with another Vendor, 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 Vendor 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:

<b>OLWS</b>	<b>[Vendor]</b>
Attn: Laural Casey	Attn:
14496 SE River Road Oak Grove, Oregon 97267	Address:
Phone: 503-353-4230	Phone:
Fax: 503-653-0586	Fax:
Email Address: laural@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 Vendor 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**

Vendor agrees to comply with all applicable requirements of federal and state civil rights and rehabilitation statutes, rules, and regulations. Vendor 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, Vendor shall perform such additional work as may be deemed necessary by OLWS, to correct negligent errors in the Services 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 Vendor 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, electronic records, and indexing information of Vendor that are pertinent to this Agreement for the purpose of making an audit, examination, copies, excerpts, and transcripts.

**20. Audit**

Vendor 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. Vendor 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. Vendor, by the signature of its authorized representative, hereby acknowledges that Vendor 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

\_\_\_\_\_  
Date

**[VENDOR]**

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Print Name & Title

\_\_\_\_\_  
Date

Contract No. \_\_\_\_\_

**EXHIBIT A  
RATES AND FEES**