

**Contract Number S-5746**

**for**

**HVAC Maintenance Services**

**between the**

**Office of the Secretary of State  
Washington State Library Division  
Washington Talking Book & Braille  
Library**

**and**

**Effective Date:** \_\_\_\_\_

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**CONTRACT NUMBER S-5746**

**for**

**HVAC Maintenance Services  
Washington Talking Book & Braille Library**

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This Contract (“Contract”) is entered into by and between the Office of the Secretary of State (“OSOS”), and \_\_\_\_\_ (“Contractor”), for the purpose of providing HVAC Maintenance Services at the Washington Talking Book & Braille Library located at 2021 9<sup>th</sup> Ave., Seattle, WA.

This Contract is a preventive-maintenance service Contract which includes scheduled intensive preventive activities. A portion of the system was installed in 2016 and is under warranty for a period of time. The remainder of the system was installed in 1996. Elements of the 1996 system need an evaluation for repairs or replacement. Refer to Exhibit C for noted problems. A quote is needed and work to do will be separately authorized. Refer to section 13.

The Office of the Secretary of State (OSOS), issued a Request for Qualifications and Quotations (RFQQ 17-01) dated December 19, 2016, (Exhibit A) for the purpose of obtaining HVAC Maintenance Services.

\_\_\_\_\_ submitted a timely Response to OSOS’ RFQQ (Exhibit B).

NOW THEREFORE, OSOS awards to \_\_\_\_\_ this Contract, the terms and conditions of which shall govern Contractor’s furnishing to OSOS HVAC Maintenance Services at Washington Talking Book & Braille Library located at 2021 9<sup>th</sup> Ave., Seattle, WA. This Contract is not for personal use.

IN CONSIDERATION of the mutual promises as hereinafter set forth, the parties agree as follows:

**1. Definition of Terms**

The following terms as used throughout this Contract shall have the meanings set forth below.

“**Business Days and Hours**” shall mean Monday through Friday, 8:30 a.m. to 5:00 p.m., Pacific Time, except for holidays observed by the state of Washington.

“**Contract**” shall mean this document, all schedules and exhibits, Statements of Work, and all amendments hereto.

“**Contractor**” shall mean \_\_\_\_\_, its employees and agents. Contractor also includes any firm, provider, organization, individual, or other entity performing the business activities under this Contract.

“**Contractor Account Manager**” shall mean a representative of Contractor who is assigned as the primary contact person whom the OSOS Project Manager shall work with for the duration of this Contract and as further defined in the section titled **Contractor Account Manager**.

“**OSOS**” or “**Office of the Secretary of State**” shall mean the Washington State Office of the Secretary of State or the **Agency**.

**“OSOS Building Manager”** shall mean the person designated by OSOS who is responsible for the day-to-day operations of Washington Talking Book & Braille Library’s building maintenance and operations.

**“OSOS Project Manager”** shall mean that person designated by OSOS to administer this Contract on behalf of OSOS (Section 16).

**“Effective Date”** shall mean the first date this Contract is in full force and effect. It may be a specific date agreed to by the parties; or, if not so specified, the date of the last signature of a party to this Contract.

**“Emergency Maintenance”** shall mean the same as Non-Scheduled Services & Repairs, below, but may require more immediate action on the part of the Contractor.

**“Equipment”** shall mean the HVAC Equipment located at OSOS’ Washington Talking Book and Braille Library, 2021 9<sup>th</sup> Avenue, Seattle, WA, 98121; see Exhibit C.

**“Exhibit A”** shall mean RFQQ 17-01.

**“Exhibit B”** shall mean \_\_\_\_\_’s Response to RFQQ 17-01.

**“Exhibit C”** shall mean the Equipment Listing at Washington Talking Book & Braille Library.

**“Exhibit D”** shall mean the “Statement of Work” as defined below.

**“HVAC”** or **“Heating, Ventilation and Air Conditioning”** shall mean the technology of indoor environmental comfort. HVAC system design is a major sub discipline of mechanical engineering, based on the principles of thermodynamics, fluid mechanics and heat transfer.

**“Key Personnel”** shall mean the Contractor’s staff to provide work or services as per the Contractor’s Response to OSOS’ RFQQ.

**“Non-Scheduled Services & Repairs”** shall mean on-site, un-scheduled maintenance or report of equipment and/or software which is not operating properly, which, in OSOS’ sole opinion, requires immediate maintenance services.

**“Preventive Maintenance”** shall mean pre-planned, periodic, inspection, testing and maintenance, including all adjustments or parts replacement or other services required to keep the equipment and software in proper working order consistent with original manufacturer specifications and recommendations.

**“Price”** shall mean charges, costs, rates, and/or fees charged for the services under this Contract and shall be paid in United States dollars.

**“Product(s)”** shall mean any Contractor-supplied equipment and documentation.

**“Proprietary Information”** shall mean information owned by Contractor to which Contractor claims a protectable interest under law. Proprietary Information includes, but is not limited to, information protected by copyright, patent, trademark, or trade secret laws.

**“RCW”** shall mean the Revised Code of Washington. All references to RCW chapters or sections shall include any successor, amendment, or replacement statute.

**“RFQQ”** shall mean the Request for Qualifications and Quotations used as a solicitation document to establish this Contract, including all its amendments and modifications, Exhibit A, hereto.

**“Response”** shall mean Contractor’s Response to OSOS’s RFQQ for HVAC Maintenance Services, Exhibit B hereto.

**“Services”** shall mean those services provided by the Contractor relating to HVAC maintenance and any related services that are appropriate to this Contract’s Statement of Work, Exhibit D, and includes both Preventive Maintenance and Non-Scheduled Services & Repairs work.

**“State”** shall mean the State of Washington.

**“Subcontractor”** shall mean one not in the employment of Contractor, who is performing all or part of the business activities under this Contract under a separate contract with Contractor. Subcontractors are not allowed under this Contract without permission, in writing, from the OSOS Project Manager.

**“Washington Administrative Code”** or **“WAC”** shall mean the “rules” or “administrative rules” designed to help the Washington state public comply with state laws, processes, and other requirements. All references to WAC chapters or sections shall include any successor, amended, or replacement regulation.

**2. Term of the Contract**

The Contract initial term begins February 6, 2017 or execution date, whichever is later, and continues through the Contract end date of June 30, 2018.

This Contract’s term may be extended by four (4) additional one (1) year terms, provided that the extensions shall be at OSOS’ option and shall be effected by OSOS giving written notice of its intent to extend this Contract to Contractor not less than thirty (30) calendar days prior to the then-current Contract term’s expiration and Contractor accepting such extension prior to the then-current Contract term’s expiration. The total term of this Contract shall not exceed five years five months. No change in terms and conditions shall be permitted during these extensions unless specifically agreed to in writing.

**3. Pricing and Total Compensation**

Contractor agrees to provide services at the all inclusive rates set forth below:

Preventive Maintenance Services – Rate	
Non-Scheduled Services & Repairs – Service Rate During Business Hours	
Non-Scheduled Services & Repairs – Service Price During Non-Business Hours	
Non-Scheduled Services & Repairs – Supply and Part Mark up	

The Preventive Maintenance Services Rate includes any Annual Maintenance services as detailed in the Statement of Work.

Rates may not be increased during the initial term of the Contract.

If Contractor reduces its rates for any of the services during the term of this Contract, OSOS shall have the immediate benefit of such lower rates for new purchases. Contractor shall send notice to the OSOS Project Manager with the reduced rates within fifteen (15) Business Days of the reduction taking effect

At least ninety (90) calendar days before the end of the specified Contract term, Contractor may propose service rate increases by written notice to OSOS Project Manager adjustments will be taken into consideration by OSOS Project Manager when determining whether to extend this Contract.

Contractor agrees that all the rates, terms, warranties, and benefits provided in this Contract are comparable to or better than the terms presently being offered by Contractor to any other governmental entity purchasing the same quantity under similar terms. If during the term of this Contract, Contractor shall enter into contracts with any other governmental entity providing greater benefits or more favorable terms than those provided by this Contract, Contractor shall be obligated to provide the same to OSOS for subsequent purchases.

The Total Compensation for the initial term of this Contract shall not exceed \_\_\_\_\_.

**4. Payment**

Payment will be made by warrant or account transfer within thirty (30) days after satisfactory completion of services or upon receipt of a properly completed invoice, whichever is later. Satisfactorily completed is defined as having all the information required for processing by OSOS Financial Services. In addition to a Federal Tax ID number, the Contractor must provide OSOS a Statewide Vendor Number (SWV#). Payment cannot be made without these numbers on file. The Contract number S-5746 and Statewide Vendor number must be referenced on each reimbursement claim in order for the claim to be processed. No payments shall be made in advance.

**5. Taxes**

Contractor will pay sales tax, if any, imposed on the Services acquired hereunder. Contractor must pay all other taxes including, but not limited to, Washington Business and Occupation Tax,

other taxes based on Contractor's income or gross receipts, or personal property taxes levied or assessed on Contractor's personal property. OSOS, as an agency of Washington State government, is exempt from property tax.

Contractor shall complete registration with the Washington State Department of Revenue and be responsible for payment of all taxes due on payments made under this Contract.

All payments accrued on account of payroll taxes, unemployment contributions, any other taxes, insurance, or other expenses for Contractor or Contractor's staff shall be Contractor's sole responsibility.

## 6. Invoice and Payment

Contractor shall submit properly itemized invoices to the OSOS Project Manager. See section 18.

Scheduled Preventive Maintenance and Non-Scheduled Services & Repairs shall be invoiced separately, not invoiced more than monthly, and provide and itemize the following, as applicable:

- OSOS Contract Number S-5746;
- Contractor name, address, phone number, and Federal Tax Identification Number;
- Description of Services provided, including a list of services provided, and any applicable parts;
- Date(s) that Services were provided, including number of hours worked;
- Contractor's Price for Services;
- Net invoice Price for each Service;
- Applicable taxes;
- Other applicable charges;
- Total invoice Price; and
- Payment terms, including any available prompt payment discounts.

Payments shall be due and payable within thirty (30) calendar days after provision and acceptance of satisfactory performance of services or thirty (30) calendar days after receipt of properly prepared invoices, whichever is later.

Incorrect or incomplete invoices will be returned by OSOS to Contractor for correction and reissue.

The OSOS **Contract Number S-5746** must appear on all bills of lading, packages, and correspondence relating to this Contract.

OSOS shall not honor drafts, nor accept goods on a sight draft basis.

If OSOS fails to make timely payment, Contractor may invoice OSOS one percent (1%) per month on the amount overdue or a minimum of one dollar (\$1). Payment will not be considered late if payment is deposited electronically in Contractor's bank account or if a check or warrant is postmarked within thirty (30) calendar days of acceptance of the Services or receipt of Contractor's properly prepared invoice, whichever is later.



**7. Overpayments to Contractor**

Contractor shall refund to OSOS the full amount of any erroneous payment or overpayment under this Contract within thirty (30) days' written notice. If Contractor fails to make timely refund, OSOS may charge Contractor one percent (1%) per month on the amount due, until paid in full.

**8. Services and Statement of Work (SOW)**

Contractor shall provide services and staff, and otherwise do all things necessary for or incidental to the performance of work as set forth in Exhibit D, incorporated herein, and any future amendments, or other mutually agreed upon modifications executed pursuant to this Contract.

**9. Commencement of Work**

Contractor is responsible for scheduling Preventive Maintenance services by calling the OSOS Washington Talking Book & Braille Library's Building Manager or Project Manager, and requesting specific dates. No work shall commence until the dates and times have been agreed upon between the parties.

**10. Site Security**

While on OSOS' premises, Contractor, its agents, or employees shall conform in all respects with physical, fire or other security regulations as well as possess identification which shows the individual as representing the Contractor. Contractor must assure all assigned Contractor staff pass comprehensive background checks, including a Contractor pre-employment background/reference check.

**11. Use of OSOS Property**

Any OSOS property furnished to the Contractor shall be used only for the performance of this Contract. The Contractor shall be responsible for loss or damage to property of OSOS during the period it has been entrusted to the Contractor or its employees. The Contractor shall return such property to OSOS in like condition to that in which it was furnished to the Contractor prior to settlement upon completion or termination of this Contract.

**12. Access to Equipment**

Contractor, its agents, delegates, representatives or employees, shall have access at reasonable times to the Equipment on OSOS premises or elsewhere requiring the specified Services, at no charge to the Contractor.

**13. Additional Services**

OSOS may, at its sole option, acquire additional Services from the Contractor as needed to upgrade or modify the HVAC Equipment identified herein. No additional services shall be rendered by the Contractor without approval of the OSOS Project Manager and confirmed with an OSOS authorized Purchasing Order (PO). Pricing for such additional services shall be as negotiated by the parties. Such additional services shall include warranty periods for parts and for labor.

**14. Contractor Commitments, Warranties and Representations**

Any written commitment by Contractor within the scope of this Contract shall be binding upon Contractor. Failure of Contractor to fulfill such a commitment may constitute breach and shall render Contractor liable for damages under the terms of this Contract. For purposes of this section, a commitment by Contractor includes: (i) Prices, discounts, and options committed to remain in force over a specified period of time; and (ii) any warranty or representation made by Contractor or contained in any Contractor or manufacturer publications, written materials, schedules, charts, diagrams, tables, descriptions, other written representations, and any other communication medium accompanying or referred to or used to effect the sale to OSOS.

**15. Legal Notices**

Any notice or demand or other communication required or permitted to be given under this Contract or applicable law shall be effective only if it is in writing and signed by the applicable party, properly addressed, and either delivered in person, or by a recognized courier service, or deposited with the United States Postal Service as first-class mail, postage prepaid, certified mail, return receipt requested, to the parties at the addresses provided in this section. For purposes of complying with any provision in this Contract or applicable law that requires a “writing,” such communication, when digitally signed with a Washington State Licensed Certificate, shall be considered to be “in writing” or “written” to an extent no less than if it were in paper form.

**To Contractor at:**

Phone:  
E-mail:

**To OSOS at:**

Patrick McDonald  
Office of the Secretary of State  
Operations Division  
PO Box 40220  
Olympia, WA 98504-0220  
Phone: 360-902-4148  
E-mail: [patrick.mcdonald@sos.wa.gov](mailto:patrick.mcdonald@sos.wa.gov)

Notices shall be effective upon receipt or four (4) Business Days after mailing, whichever is earlier. The notice address as provided herein may be changed by written notice given as provided above.

In the event that a subpoena or other legal process commenced by a third party in any way concerning the Services provided pursuant to this Contract is served upon Contractor or OSOS, such party agrees to notify the other party in the most expeditious fashion possible following receipt of such subpoena or other legal process. Contractor and OSOS further agree to cooperate with the other party in any lawful effort by the other party to contest the legal validity of such subpoena or other legal process commenced by a third party.

**16. OSOS Project Manager**

OSOS shall appoint an OSOS Project Manager for this Contract and will provide oversight of the activities conducted hereunder. OSOS Project Manager will be the principal contact for Contractor concerning business activities under this Contract. OSOS shall notify Contractor, in writing, when there is a new OSOS Project Manager assigned to this Contract.

OSOS Project Manager: Patrick McDonald  
Address: Office of the Secretary of State  
Operations Division  
PO Box 40220  
Olympia, WA 98504-0220  
Phone: 360-902-4148  
E-mail: [patrick.mcdonald@sos.wa.gov](mailto:patrick.mcdonald@sos.wa.gov)

**17. Contractor Account Manager**

Contractor shall appoint an Account Manager for OSOS's account under this Contract who will provide oversight of Contractor activities conducted hereunder. Contractor's Account Manager will be the principal point of contact for OSOS concerning Contractor's performance under this Contract. Contractor shall notify the OSOS Project Manager, in writing, when there is a new Contractor Account Manager assigned to this Contract. The Contractor Account Manager information is:

Contractor Project Manager:  
Address  
Phone:  
Email:

**18. Order of Precedence**

In the event of any inconsistency in this Contract, the inconsistency shall be resolved in the following order of precedence:

- Applicable federal and state statutes, laws, and regulations;
- Sections of this Contract;
- Exhibit D – Statement of Work (SOW);
- OSOS' RFQQ 17-01, dated December 19, 2016;
- Contractor's Response to OSOS' RFQQ 17-01 dated \_\_\_\_\_; and
- The terms and conditions contained on OSOS' order documents, if used, for non-scheduled services and repairs.

**19. Entire Agreement**

This Contract sets forth the entire agreement between the parties with respect to the subject matter hereof and except as provided in the Section 14. entitled **Contractor Commitments, Warranties and Representations**, understandings, agreements, representations, or warranties not contained in this Contract or a written amendment hereto shall not be binding on either party. Except as provided herein, no alteration of any of the terms, conditions, delivery, price, quality, or Specifications of this Contract will be effective without the written consent of both parties.

**20. Authority for Modifications and Amendments**

No modification, amendment, alteration, addition, or waiver of any section or condition of this Contract or any SOW under this Contract shall be effective or binding unless it is in writing and signed by OSOS individual who has the express authority to alter, amend, modify, add, or waive

any section or condition of this Contract or SOW on behalf of OSOS and Contractor Contracting Officers.

**21. Independent Status of Contractor**

In the performance of this Contract, the parties will be acting in their individual, corporate or governmental capacities and not as agents, employees, partners, joint venturers, or associates of one another. The parties intend that an independent contractor relationship will be created by this Contract. The employees or agents of one party shall not be deemed or construed to be the employees or agents of the other party for any purpose whatsoever. Contractor shall not make any claim of right, privilege or benefit which would accrue to an employee under Chapter 41.06 RCW or Title 51 RCW.

**22. Governing Law**

This Contract shall be construed and interpreted in accordance with the laws of the State of Washington, and the venue of any action brought hereunder shall be in the Superior Court for Thurston County, Washington.

**23. Subcontractors**

Contractor may, with prior written permission from OSOS, which consent shall not be unreasonably withheld, enter into subcontracts with third parties for its performance of any part of Contractor's duties and obligations. In no event shall the existence of a subcontract operate to release or reduce the liability of Contractor to OSOS for any breach in the performance of Contractor's duties. For purposes of this Contract, Contractor agrees that all Subcontractors shall be held to be agents of Contractor. Contractor shall be liable for any loss or damage to OSOS, including but not limited to personal injury, physical loss, or harassment of OSOS employee occasioned by the acts or omissions of Contractor's Subcontractors, their agents or employees. The **Publicity** and **Review of Contractor's Records** sections of this Contract shall apply to all Subcontractors.

**24. Assignment**

With the prior written consent of OSOS Project Manager, which consent shall not unreasonably withheld, Contractor may assign this Contract including the proceeds hereof, provided that such assignment shall not operate to relieve Contractor of any of its duties and obligations hereunder, nor shall such assignment affect any remedies available to OSOS that may arise from any breach of the sections of this Contract, Statements of Work, or warranties made herein including but not limited to, rights of setoff.

**25. Publicity**

The award of this Contract to Contractor is not in any way an endorsement of Contractor or Contractor's Services by OSOS and shall not be so construed by Contractor in any advertising or other publicity materials.

Contractor agrees to submit to OSOS, all advertising, sales promotion, and other publicity materials relating to this Contract and Services furnished by Contractor wherein OSOS' name is mentioned, language is used, or Internet links are provided from which the connection of OSOS'

name therewith may, in OSOS' judgment, be inferred or implied. Contractor further agrees not to publish or use such advertising, sales promotion materials, publicity or the like through print, voice, the World Wide Web, and other communication media in existence or hereinafter developed without the express written consent of OSOS *prior* to such use.

**26. Review of Contractor's Records**

Contractor shall maintain books, records, documents and other evidence relating to this Contract, including but not limited to Minority and Women's Business Enterprise participation, and accounting procedures and practices which sufficiently and properly reflect all direct and indirect costs of any nature invoiced in the performance of this Contract. Contractor shall retain all such records for six (6) years after the expiration or termination of this Contract. Records involving matters in litigation related to this Contract shall be kept for either one (1) year following the termination of litigation, including all appeals, or six (6) years from the date of expiration or termination of this Contract, whichever is later.

All such records shall be subject at reasonable times and upon prior notice to examination, inspection, copying, or audit by personnel so authorized by the OSOS' Project Manager and/or the Office of the State Auditor and federal officials so authorized by law, rule, regulation or contract, when applicable, at no additional cost to the State. During this Contract's term, Contractor shall provide access to these items within Thurston County. Contractor shall be responsible for any audit exceptions or disallowed costs incurred by Contractor.

Contractor shall incorporate in its subcontracts this section's records retention and review requirements.

It is agreed that books, records, documents, and other evidence of accounting procedures and practices related to Contractor's cost structure, including overhead, general and administrative expenses, and profit factors shall be excluded from OSOS's review unless the cost or any other material issue under this Contract is calculated or derived from these factors.

**27. Right of Inspection**

Contractor shall provide right of access to its facilities to OSOS, or any of OSOS's officers, or to any other authorized agent or official of the state of Washington or the federal government, at all reasonable times, in order to monitor and evaluate performance, compliance, and/or quality assurance under this Contract.

**28. Save Harmless**

Contractor shall defend, indemnify, and save OSOS harmless from and against any claims, including reasonable attorneys' fees resulting from such claims, by third parties for any or all injuries to persons or damage to property of such third parties arising from intentional, willful or negligent acts or omissions of Contractor, its officers, employees, or agents. Contractor's obligation to defend, indemnify and save OSOS harmless shall not be eliminated or reduced by any alleged concurrent OSOS negligence.

**29. Insurance Coverage**

The Contractor is to furnish OSOS with a certificate of insurance executed by a duly authorized representative of each insurer, showing compliance with the insurance requirements set forth below.

The Contractor shall, at Contractor's own expense, obtain and keep in force insurance coverage, which shall be maintained in full force and effect during the term of the contract. The Contractor shall furnish evidence in the form of a Certificate of Insurance that insurance shall be provided, identifying OSOS as the Certificate Holder, and a copy shall be forwarded to the OSOS within fifteen (15) days of the contract effective date.

### Liability Insurance

Commercial General Liability Insurance (CGL): Contractor shall maintain general liability insurance and, if necessary, commercial umbrella insurance, with a limit of not less than \$1,000,000 per occurrence/\$2,000,000 general aggregate. If CGL insurance contains aggregate limits, the general aggregate limit shall be at least twice the "each occurrence" limit. CGL insurance shall have products-completed operations aggregate limit of at least two times the "each occurrence" limit. CGL insurance shall be written on ISO occurrence from CG 00 01 (or a substitute form providing equivalent coverage). All insurance shall cover liability assumed under an insured contract (including the tort liability of another assumed in a business contract), and contain separation of insured's (cross liability) condition.

Additionally, the Contractor is responsible for ensuring that any subcontractors provide adequate insurance coverage for the activities arising out of subcontracts.

Business Auto Policy: As applicable, the Contractor shall maintain business auto liability and, if necessary, commercial umbrella liability insurance with a limit not less than \$1,000,000 per accident. Such insurance shall cover liability arising out of "Any Auto." Business auto coverage shall be written on ISO form CA 00 01, 1990 or later edition, or substitute liability form providing equivalent coverage.

### Employers Liability ("Stop Gap") Insurance

In addition, the Contractor shall buy employers liability insurance and, if necessary, commercial umbrella liability insurance with limits not less than \$1,000,000 each accident for bodily injury by accident or \$1,000,000 each employee for bodily injury by disease.

### Additional Provisions

Above insurance policy shall include the following provisions:

- Additional Insured. OSOS, its elected and appointed officials, agents and employees shall be named as an additional insured on all general liability, excess, umbrella and property insurance policies. All insurance provided in compliance with this contract shall be primary as to any other insurance or self-insurance programs afforded to or maintained by the state.
- Cancellation. OSOS shall be provided written notice before cancellation or non-renewal of any insurance referred to therein, in accord with the following specifications. Insurers subject to 48.18 RCW (Admitted and Regulation by the Insurance Commissioner): The insurer shall give the state 45 days advance notice of cancellation or non-renewal. If cancellation is due to non-payment of premium, the state shall be given 10 days advance notice of cancellation. Insurers subject to 48.15 RCW (Surplus lines): The state shall be given 20 days advance notice of cancellation. If cancellation is due to non-payment of premium, the state shall be given 10 days advance notice of cancellation.
- Identification. Policy must reference the state's contract number and the agency name.

- Insurance Carrier Rating. All insurance and bonds should be issued by companies admitted to do business within the state of Washington and have a rating of A-, Class VII or better in the most recently published edition of Best's Reports. Any exception shall be reviewed and approved by OSOS, the risk manager for the state of Washington, before the contract is accepted or work may begin. If an insurer is not admitted, all insurance policies and procedures for issuing the insurance policies must comply with Chapter 48.15 RCW and 284-15 WAC.
- Excess Coverage. By requiring insurance herein, the state does not represent that coverage and limits will be adequate to protect Contractor and such coverage and limits shall not limit Contractor's liability under the indemnities and reimbursements granted to the state in this contract.

#### Workers' Compensation Coverage

The Contractor will at all times comply with all applicable workers' compensation, occupational disease, and occupational health and safety laws, statutes, and regulations to the full extent applicable. The state will not be held responsive in any way for claims filed by the Contractor or their employees for services performed under the terms of this contract.

### **30. Industrial Insurance Coverage**

Prior to performing work under this Contract, Contractor shall provide or purchase industrial insurance coverage for its employees, as may be required of an "employer" as defined in Title 51 RCW, and shall maintain full compliance with Title 51 RCW during the course of this Contract. OSOS will not be responsible for payment of industrial insurance premiums or for any other claim or benefit for Contractor, or employee of Contractor, which might arise under the industrial insurance laws during the performance of duties and services under this Contract.

### **31. Licensing Standards**

Contractor shall comply with all applicable local, state, and federal licensing, accreditation and registration requirements and standards necessary in the performance of this Contract. (See, for example, Chapter 19.02 RCW for state licensing requirements and definitions.)

### **32. Compliance with Civil Rights Laws**

During the performance of this Contract, Contractor shall comply with all federal and applicable state nondiscrimination laws, including but not limited to: Title VII of the Civil Rights Act, 42 U.S.C. §12101 *et seq.*; the Americans with Disabilities Act (ADA); and Title 49.60 RCW, Washington Law Against Discrimination. In the event of Contractor's noncompliance or refusal to comply with any nondiscrimination law, regulation or policy, this Contract may be rescinded, canceled, or terminated in whole or in part under the **Termination for Default** sections, and Contractor may be declared ineligible for further contracts with OSOS.

### **33. Severability**

If any term or condition of this Contract or the application thereof is held invalid, such invalidity shall not affect other terms, conditions, or applications which can be given effect without the invalid term, condition, or application; to this end the terms and conditions of this Contract are declared severable.

**34. Waiver**

Waiver of any breach of any term or condition of this Contract shall not be deemed a waiver of any prior or subsequent breach. No term or condition of this Contract shall be held to be waived, modified, or deleted except by a written instrument signed by the parties.

**35. Contractor's Proprietary Information**

Contractor acknowledges that OSOS is subject to chapter 42.56 RCW and that this Contract shall be a public record as defined in chapter 42.56 RCW. Any specific information that is claimed by Contractor to be Proprietary Information must be clearly identified as such by Contractor. To the extent consistent with chapter 42.56 RCW, OSOS shall maintain the confidentiality of all such information marked Proprietary Information. If a public disclosure request is made to view Contractor's Proprietary Information, OSOS will notify Contractor of the request and of the date that such records will be released to the requester unless Contractor obtains a court order from a court of competent jurisdiction enjoining that disclosure. If Contractor fails to obtain the court order enjoining disclosure, OSOS will release the requested information on the date specified.

**36. Disputes**

Except as otherwise provided in the Contract, when a bona fide dispute arises between OSOS and Contractor and it cannot be resolved by direct negotiation, either party may request a dispute hearing with the Agent. The request for a dispute hearing must:

- a. be in writing;
- b. state the disputed issue(s);
- c. state the relative positions of the parties;
- d. state Contractor's name, address, and contract number; and
- e. be mailed to the Agent and the other party's (respondent's) Contract Manager within 3 working days after the parties agree that they cannot resolve the dispute.
- f. The respondent shall send a written answer to the requester's statement to both the agent and the requester within 15 working days.
- g. The Agent shall review the written statements and reply in writing to both parties within 10 working days. The Agent may extend this period if necessary by notifying the parties.
- h. The parties agree that this dispute process shall precede any action in a judicial or quasi-judicial tribunal.

Nothing in the Contract shall be construed to limit the parties' choice of a mutually acceptable Alternate Dispute Resolution method in addition to the dispute resolution procedure outlined above.

Nothing in this contract shall be construed to limit the parties' choice of a mutually acceptable alternate dispute resolution method in addition to the dispute resolution procedure outlined above.

**37. Non-Exclusive Remedies**

The remedies provided for in this Contract shall not be exclusive but are in addition to all other remedies available under law.



### **38. Failure to Perform**

If Contractor fails to perform any substantial obligation under this Contract, OSOS shall give Contractor written notice of such Failure to Perform. If after thirty (30) calendar days from the date of the written notice Contractor still has not performed, then OSOS may withhold all monies due and payable to Contractor, without penalty to OSOS, until such Failure to Perform is cured or otherwise resolved.

### **39. Limitation of Liability**

The parties agree that neither Contractor nor OSOS shall be liable to each other, regardless of the form of action, for consequential, incidental, indirect, or special damages except a claim related to bodily injury or death, or a claim or demand based on patent, copyright, or other intellectual property right infringement, in which case liability shall be as set forth elsewhere in this Contract. This section does not modify any sections regarding liquidated damages or any other conditions as are elsewhere agreed to herein between the parties. The damages specified in the sections titled **Termination for Default** and **Review of Contractor's Records** are not consequential, incidental, indirect, or special damages as that term is used in this section.

Neither Contractor nor OSOS shall be liable for damages arising from causes beyond the reasonable control and without the fault or negligence of either Contractor or OSOS. Such causes may include, but are not restricted to, acts of God or of the public enemy, acts of a governmental body other than OSOS acting in either its sovereign or contractual capacity, war, explosions, fires, floods, earthquakes, epidemics, quarantine restrictions, strikes, freight embargoes, and unusually severe weather; but in every case the delays must be beyond the reasonable control and without fault or negligence of Contractor or OSOS.

Neither party shall be liable for personal injury to the other party or damage to the other party's property except personal injury or damage to property proximately caused by such party's respective fault or negligence.

### **40. Termination for Default**

If either OSOS or Contractor violates any material term or condition of this Contract or fails to fulfill in a timely and proper manner its obligations under this Contract, then the aggrieved party shall give the other party written notice of such failure or violation. The responsible party will correct the violation or failure within thirty (30) calendar days or as otherwise mutually agreed in writing. If the failure or violation is not corrected, this Contract may be terminated immediately by written notice from the aggrieved party to the other party. The option to terminate shall be at the sole discretion of the aggrieved party. OSOS reserves the right to suspend all or part of the Contract, withhold further payments, or prohibit Contractor from incurring additional obligations of funds during investigation of any alleged Contractor compliance breach and pending corrective action by Contractor or a decision by OSOS to terminate the Contract.

In the event of termination of this Contract by OSOS, OSOS shall have the right to procure the Services that are the subject of this Contract on the open market and Contractor shall be liable for all damages, including, but not limited to: (i) the cost difference between the original Contract price for the Services and the replacement costs of such Services acquired from another Contractor; (ii) if applicable, all administrative costs directly related to the replacement of this Contract, such as costs of competitive bidding, mailing, advertising, applicable fees, charges or penalties, staff time costs; and, (iii) any other costs to OSOS resulting from Contractor's breach.

OSOS shall have the right to deduct from any monies due to Contractor, or that thereafter become due, an amount for damages that Contractor will owe OSOS for Contractor's default.

If the Failure to Perform is without the defaulting party's control, fault, or negligence, the termination shall be deemed to be a **Termination for Convenience**.

This section shall not apply to any failure(s) to perform that results from the willful or negligent acts or omissions of the aggrieved party.

**41. Termination for Convenience**

Except as provided in the Contract, OSOS may, by 10 days written notice, beginning on the second day after the mailing, terminate the Contract, in whole or in part. If the Contract is so terminated, OSOS shall be liable only for payment required under the terms of the Contract for services rendered or goods delivered prior to the effective date of termination.

**42. Termination for Withdrawal of Authority**

In the event that OSOS's authority to perform any of its duties is withdrawn, reduced, or limited in any way after the commencement of this Contract and prior to normal completion, OSOS may terminate this Contract by seven (7) calendar days written notice to Contractor. No penalty shall accrue to OSOS in the event this section shall be exercised. This section shall not be construed to permit OSOS to terminate this Contract in order to acquire similar Services from a third party.

**43. Termination for Non-Allocation of Funds**

If funds are not allocated to OSOS to continue this Contract in any future period, OSOS may terminate this Contract by seven (7) calendar days written notice to Contractor or work with Contractor to arrive at a mutually acceptable resolution of the situation. OSOS will not be obligated to pay any further charges for Services including the net remainder of agreed to consecutive periodic payments remaining unpaid beyond the end of the then-current period. OSOS agrees to notify Contractor in writing of such non-allocation at the earliest possible time. No penalty shall accrue to OSOS in the event this section shall be exercised. This section shall not be construed to permit OSOS to terminate this Contract in order to acquire similar Services from a third party.

**44. Termination for Conflict of Interest**

OSOS may terminate this Contract by written notice to Contractor if OSOS determines, after due notice and examination, that any party has violated Chapter 42.52 RCW, Ethics in Public Service, or any other laws regarding ethics in public acquisitions and procurement and performance of contracts. In the event this Contract is so terminated, OSOS shall be entitled to pursue the same remedies against Contractor as it could pursue in the event Contractor breaches this Contract.

**45. Termination Procedure**

In addition to the procedures set forth below, if OSOS terminates this Contract, Contractor shall follow any procedures OSOS specifies in OSOS's Notice of Termination.

Upon termination of this Contract, OSOS, in addition to any other rights provided in this Contract, may require Contractor to deliver to OSOS any property specifically produced or

acquired for the performance of such part of this Contract as has been terminated. The section titled **Treatment of Assets** shall apply in such property transfer.

Unless otherwise provided herein, OSOS shall pay to Contractor the agreed-upon Price, if separately stated, for the Services received by OSOS, provided that in no event shall OSOS pay to Contractor an amount greater than Contractor would have been entitled to if this Contract had not been terminated. Failure to agree with such determination shall be a dispute within the meaning of the **Disputes** section of this Contract. OSOS may withhold from any amounts due Contractor such sum as OSOS determines to be necessary to protect OSOS from potential loss or liability.

Contractor shall pay amounts due OSOS as the result of termination within thirty (30) calendar days of notice of the amounts due. If Contractor fails to make timely payment, OSOS may charge interest on the amounts due at one percent (1%) per month until paid in full.

**46. Covenant Against Contingent Fees**

Contractor warrants that no person or selling agency has been employed or retained to solicit or secure this Contract upon any agreement or understanding for a commission, percentage, brokerage, or contingent fee, *except* bona fide employees or a bona fide established commercial or selling agency of Contractor.

In the event Contractor breaches this section, OSOS shall have the right to either annul this Contract without liability to OSOS or, in OSOS's discretion, deduct from payments due to Contractor, or otherwise recover from Contractor, the full amount of such commission, percentage, brokerage, or contingent fee.

**47. Authority to Bind**

The signatories to this Contract represent that they have the authority to bind their respective organizations to this Contract.

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**48. Counterparts**

This Contract may be executed in counterparts or in duplicate originals. Each counterpart or each duplicate shall be deemed an original copy of this Contract signed by each party, for all purposes.

*In Witness Whereof*, the parties hereto, having read this Contract in its entirety, including all attachments, do agree in each and every particular and have thus set their hands hereunto.

**Approved**  
Office of the Secretary of State

**Approved**  
Contractor name

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Print or Type Name                      Date

\_\_\_\_\_  
Print or Type Name                      Date

\_\_\_\_\_  
Title

\_\_\_\_\_  
Title

<b>Contractor Information</b>	
Contractor's Federal Tax Id Number:	
Contractor's UBI Number:	
Minority or Woman Owned Business Enterprise	
Yes _____ (Certification Number)	No _____

**Exhibit A:**

**OSOS Procurement - RFQQ 17-01**

*For Exhibit A, see separate document*

SAMPLE CONTRACT

**Exhibit B:**

**Contractor's Response to  
OSOS' Procurement RFQQ 17-01**

*For Exhibit B, see separate document*

SAMPLE CONTRACT

**Exhibit C:**

**Equipment Inventory  
located at  
Washington Talking Book & Braille Library  
2021 9<sup>th</sup> Ave.  
Seattle, WA 98121-2783**

*For Exhibit C, see separate document*

SAMPLE CONTRACT

## **Exhibit D:**

### **STATEMENT OF WORK**

to  
Contract Number S-5746  
for  
HVAC System Preventive Maintenance and Repair Services  
at Washington Talking Book & Braille Library  
2021 9<sup>th</sup> Ave.  
Seattle, WA 98121-2783

The Contractor shall provide services and staff, and otherwise do all things necessary for or incidental to the performance of work, as set forth below:

#### **SECTION 1: Contractor Qualifications and General Requirements**

##### **1.1. Service Personnel Required Experience**

Contractor's Key Personnel servicing the equipment specified under this Contract must have a minimum of five (5) years' work experience in the care and maintenance of systems and have been trained using standard industry practices and materials, or must be directly supervised by the Contractor's service personnel who have the experience described above. The Key Personnel are listed in the Contractor's RFQQ Response (Exhibit B). Should the Contractor wish to change the Key Personnel servicing this Contract, the Contractor must first receive prior written authorization from the OSOS Project Manager.

##### **1.2. Not Used**

##### **1.3. Hours of Labor & Prevailing Wage Requirements**

In compliance with [RCW 49.28](#) and [RCW 39.12.020](#), Contractor agrees that no worker, laborer, or mechanic in the employ of the Contractor or subcontractor shall be permitted or required to work more than eight (8) hours in any one calendar day, or forty (40) hours in any one calendar week, provided that in cases of extraordinary emergency such as danger to life or property, the hours of work may be extended but in such cases the rate of pay for time employed in excess of the above shall be at the prevailing overtime rate of pay. Except, contracts will not require the payment of overtime rates for the first two hours worked in excess of eight (8) hours per day when the employer has obtained the employee's agreement (as defined in [WAC 296-127-022](#)) to work a four-day, ten-hour work week.

The Department of Labor and Industries will publish prevailing wage rates on the first business day of February and August of each year. The wage rates will become effective thirty (30) days following publication. For all contracts, the prevailing wage rates which are in effect on the bid opening date or on the effective date of any extension of the contract are the wage rates that must be paid for the duration of the Contract. The classification and wages in effect at the time of the RFQQ opening were:



<b>County</b>	<b>Trade</b>	<b>Job Classification</b>	<b>Wage</b>
King	Heating Equipment Mechanics	Journey Level	\$72.83

Questions should be directed to the Industrial Statistician, Department of Labor and Industries, Employment Standards Division, PO Box 44540, Tumwater, WA 98504-4540 (Telephone (360) 902-5334).

The Contractor must submit to the Industrial Statistician of the Department of Labor and Industries a “Statement of Intent to Pay Prevailing Wages.” A copy of the approved intent statements must be submitted to OSOS in order to receive the first progress payment on this Contract. Following final acceptance of the project, Contractor must submit to the Industrial Statistician an “Affidavit of Wages Paid.” An approved affidavit must be submitted to OSOS before they are authorized to make the final payment on this Contract.

Each “Statement of Intent to Pay Prevailing Wages” or “Affidavit of Wages Paid” submitted for approval to the Industrial Statistician must be accompanied with the current filing fee.

A copy of the approved Statement of Intent to Pay Prevailing Wages shall be posted at the job site with the address and telephone number of the Industrial Statistician, where a complaint or inquiry concerning prevailing wages may be made. If a dispute arises as to what are the prevailing rates of wages for a specific trade, craft or occupation, and such dispute cannot be adjusted by the parties in interest, including labor and management representatives, the matter shall be referred for arbitration to the Director of the Department of Labor and Industries, and his/her decision shall be final, conclusive and binding on all parties involved in the dispute.

Vocationally handicapped workers, i.e., those individuals whose earning capacity is impaired by physical or mental deficiency or injury, may be employed at wages lower than the established prevailing wage. The Fair Labor Standards Act requires that wages based on individual productivity be paid to handicapped workers employed under certificates issued by the Secretary of Labor. These certificates are acceptable to the Department of Labor and Industries. Sheltered workshops for the handicapped may submit a request to the Department of Labor and Industries for a special certificate, which would, if approved, entitle them to pay their employees at wages, lower than the established prevailing wage.

Prevailing wage requirements do not apply to:

- Sole owners and their spouses.
- Any partner who owns at least 30% of a partnership.
- The president, vice-president, and treasurer of a corporation if each one owns at least 30% of the corporation.
- Workers regularly employed on monthly or per diem salary by state or any political subdivision created by its laws.

The Contractor shall complete, file, and pay all filing fees as required by the Department of Labor and Industries.

**1.4. Service Availability**

Contractor must provide on-call service twenty-four (24) hours per day, 365 calendar days per year. As per the Contractor's RFQQ Response, the Contractor shall provide a 2-hour priority response time for all non-emergency calls for service or troubleshooting.

**1.5. Central Contact Point and Call Response Time**

Contractor must provide a designated central point of contact, a manned twenty-four (24) hour, toll-free phone number for OSOS to report emergencies and to request dispatch, contact service personnel, request problem status updates, and receive problem resolutions. For those times when the phone is not answered directly by the Contractor, (e.g. the number is to a pager or an answering Service, or something similar) Contractor must return the call to OSOS within thirty (30) minutes.

**1.6. Ongoing Parts Supply**

Contractor must maintain a reasonable level of inventory of frequently replaced parts to facilitate both Preventive and Non-Scheduled Services & Repairs for equipment listed in Exhibit C.

**1.7. Necessary Tools and Equipment**

Contractor must provide all tools and equipment necessary to perform all Services required in this RFQQ. Contractor personnel must arrive on-site with proper equipment to perform diagnostics.

**1.8. Service Personnel Check-in/Check-out**

Contractor technicians performing any Services under the Contract must check-in and check-out with the OSOS Building Manager for each service call. Failure to fulfill this requirement may result in termination of the Contract.

**1.9. Performance Measurements**

OSOS shall measure Contractor's performance as follows:

**1.9.1 Preventive Maintenance**

The Contractor shall ensure all preventive maintenance services are completed as outlined in Section 2 in the Statement of Work.

OSOS shall periodically inspect the Contractor's services after each visit and before the next quarterly visit. If the Contractor misses or does not handle a service visit to OSOS' satisfaction, OSOS shall notify the Contractor and give the Contractor a reasonable and specified time period to correct. Contractor shall not invoice time it takes the Contractor to correct poor performance.

**1.9.2 Non-Scheduled Services & Repairs**

The Contractor shall ensure all non-scheduled service calls are completed as outlined in Section 3 in the Statement of Work.

OSOS shall inspect the Contractor's services sometime after each visit. If the Contractor misses or does not handle a Non-Scheduled Services & Repairs to OSOS' satisfaction, OSOS shall notify the Contractor and give the Contractor a reasonable and specified time period to correct. Contractor shall not invoice any time it takes the Contractor to correct poor performance.

OSOS payment for services is contingent upon Contractor's successful performance. OSOS shall hold payment until performance is corrected.

### **1.10. Service Reports**

Contractor must provide OSOS with a written, legible, service reports. The Annual Preventive Maintenance and Non-Scheduled Services & Repairs reports must not be combined, but separate.

#### **1.10.1 Preventive Maintenance Annual Report**

Contractor shall provide OSOS with a Report after each annual preventative maintenance activity.

The Preventive Maintenance Reports shall include, at a minimum: what equipment was not serviced; the repairs completed on specific equipment; itemization of any replacement parts required and identification of any problems requiring further attention. If applicable, the Report shall also include a record of all tests and adjustments. This Report must also address equipment trends and the Contractor's recommendations, and shall be presented to OSOS' Project Manager no later than thirty (30) days after the annual preventative maintenance services were completed.

#### **1.10.2 Non-Scheduled Services & Repairs Monthly Report**

Contractor shall provide OSOS with a monthly Report for non-scheduled services and repairs during the previous thirty (30) days, including repairs and adjustments. This Report shall be provided to OSOS as part of the Contractor's monthly invoice.

The Non-Scheduled Services & Repairs Report shall include, at a minimum: the date of each service call, specific equipment serviced, the nature of the problem and the approved corrective action taken.

## **SECTION 2: Preventive Maintenance Service Requirements**

### **2.1. Preventive Maintenance Service Defined**

Preventive Maintenance is defined as pre-planned, periodic, on-site inspection and testing of the Equipment set forth in Exhibit C: Equipment Inventory. Preventive Maintenance shall include all adjustments or parts replacement (with the exception of filters which OSOS will provide) required to keep equipment and/or software in proper working order consistent with original manufacturer specifications and recommendations.

The Contractor shall work with OSOS to develop regular intervals for such Preventive Maintenance Service, and in no event shall these intervals exceed three (3) months. Preventive Maintenance Services shall be performed according to a schedule developed and agreed to between the Contractor and OSOS.

Should OSOS require replacement of specific equipment, the Contractor is responsible for providing the original manufacture's recommendations to the new equipment and note this in the service schedule, as well as maintain a reasonable level of inventory of frequently replaced parts to facilitate both Preventive and Non-Scheduled Services & Repairs.

Contractor shall provide Preventive Maintenance Services as follows.

### **2.2. Scheduling of Preventive Maintenance and OSOS Notification**

The Contractor shall schedule each Preventive Maintenance with the OSOS Building Manager. Contractor shall conduct Preventive Maintenance only between the hours of 8 AM and 5 PM (after 8:30 AM and before 5 PM), Monday through Friday, unless specifically approved by the OSOS Building Manager. Contractor shall use their best efforts to conduct maintenance and repairs in a manner that minimizes disruption to the tenants in the building. Contractor also agrees to notify the OSOS Building Manager in advance of all Preventive Maintenance or testing that may, in any way, impair OSOS' usual and customary operations. Notification must include the proposed date of maintenance, time of maintenance, planned duration of maintenance and purpose of maintenance.

### **2.3. Preventive Maintenance Schedule**

The Contractor shall provide a schedule of maintenance based on manufacturer's recommendations with tasks to perform and will be inserted here.

## **SECTION 3: Non-Scheduled Services & Repair**

### **3.1. Non-Scheduled Services & Repairs Defined**

Non-Scheduled Services & Repairs is defined as on-site, un-scheduled maintenance or repair of equipment which is not operating properly, which, in OSOS' opinion, requires immediate repair or services. Any parts or supplies required for non-scheduled repairs shall be invoiced at no more than 20% above the Contractor's cost. Contractor shall provide Non-Scheduled Services & Repair as follows.

### **3.2. Non-Scheduled Services & Repairs During Business Hours**

For Non-Scheduled Services & Repairs during business hours, Contractor agrees to have a qualified service technician on-site within sixty (60) minutes after notification by OSOS that service is required. If Contractor fails to arrive at the Washington Talking Book and Braille Library within the sixty (60) minute window, Contractor agrees to issue a \$100.00 credit to OSOS for each hour that Contractor is late arriving at the Washington Talking Book and Braille Library.

### **3.3. Non-Scheduled Services & Repairs During Non-Business Hours**

For Non-Scheduled Services & Repair not during normal business hours, Contractor agrees to respond to OSOS' notification via telephone within thirty (30) minutes to determine the appropriate technician response time. Depending on the situation, the qualified service technician shall be on-site within two (2) hours after determining the urgency. If Contractor agrees to dispatch but fails to arrive at the Washington Talking Book & Braille Library within the agreed time frame, Contractor agrees to issue a \$100.00 credit to OSOS for each hour that Contractor is late arriving at the Washington Talking Book & Braille Library.

### **3.4. Estimates for Non-Scheduled Services & Repairs**

For non-emergency Non-Scheduled Services & Repairs, the Contractor agrees to obtain OSOS' approval prior to beginning work.

For work estimated to total over \$500.00, the Contractor agrees to provide the OSOS Project Manager, or designee, a written estimate (email is acceptable) and wait for OSOS' approval. For work estimated up to \$500.00, the Contractor agrees to contact the OSOS Project Manager, or designee, to obtain a verbal approval.

All estimates must be provided on a cost and bid break-out sheet which details cost estimates for parts and/or equipment for the repair or service and shall include the approximate number of hours it may take to complete the service. The estimate's hourly rate and parts mark-up must be consistent with the terms of this Contract. OSOS shall confirm its approval of the estimate with an authorized Purchase Order (PO).

If the non-scheduled service and/or repair are determined by both OSOS and the Contractor to be an emergency, the Contractor must discuss estimate for related parts and services with and receive verbal approval from OSOS, or OSOS' designated representative, prior to dispatch. No written estimate or subsequent approval will be required for services and repairs determined to be an emergency.

OSOS reserves the right to procure identified repairs or replacement of components through an open competitive bidding process.

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