

MAINTENANCE SERVICES AGREEMENT

This Maintenance Services Agreement ("Agreement") is dated July 05, 2017 ("Effective Date") and is between the **City of Manhattan Beach**, a California municipal corporation ("City") and **Schindler Elevator Corporation**, a Delaware corporation ("Contractor"). City and Contractor are sometimes referred to herein as the "Parties", and individually as a "Party".

RECITALS

A. City issued Request for Proposals No. 1110-17 on January 18, 2017, seeking proposals for the provision of Elevator & Escalator Maintenance. Contractor submitted a proposal dated February 24, 2017 in response to the RFP.

B. Contractor represents that it is fully qualified to perform such services by virtue of its experience and the training, education and expertise of its principals and employees.

C. City desires to retain Contractor as an independent contractor and Contractor desires to serve City to perform these services in accordance with the terms and conditions of this Agreement.

The Parties therefore agree as follows:

1. Contractor's Services.

A. Scope of Services. Contractor shall perform the services described in the Scope of Services (the "Services"), attached as **Exhibit A**. City may request, in writing, changes in the Scope of Services to be performed. Any changes mutually agreed upon by the Parties, and any increase or decrease in compensation, shall be incorporated by written amendments to this Agreement.

B. Party Representatives. For the purposes of this Agreement, the City Representative shall be the City Manager, or such other person designated in writing by the City Manager (the "City Representative"). For the purposes of this Agreement, the Contractor Representative shall be [Denis Davis], [General Manager] (the "Contractor Representative"). The Contractor Representative shall directly manage Contractor's Services under this Agreement. Contractor shall not change the Contractor Representative without City's prior written consent.

C. Time for Performance. Contractor shall commence the Services on the Effective Date and shall perform all Services in conformance with the project timeline, set forth in **Exhibit A**.

D. Standard of Performance. Contractor shall perform all Services under this Agreement in accordance with the standard of care generally exercised by like professionals under similar circumstances and in a manner reasonably satisfactory to City.

E. Personnel. Contractor has, or will secure at its own expense, all personnel required to perform the Services required under this Agreement. All of the Services required under this Agreement shall be performed by Contractor or under its supervision, and all personnel engaged in the work shall be qualified to perform such Services.

F. Compliance with Laws. Contractor shall comply with all applicable federal, state and local laws, ordinances, codes, regulations and requirements.

G. Permits and Licenses. Contractor shall obtain and maintain during the Agreement term all necessary licenses, permits and certificates required by law for the provision of Services under this Agreement, including a business license.

H. Prevailing Wages. This Agreement calls for services that, in whole or in part, constitute "public works" as defined in the California Labor Code. Therefore, as to those services that are "public works", Contractor shall comply in all respects with all applicable provisions of the California Labor Code, including those set forth in **Exhibit B** hereto.

2. Term of Agreement. The term of this Agreement shall be from the Effective Date through July 5, 2020, unless sooner terminated as provided in Section 12 of this Agreement or extended. The City Manager is authorized to extend the term for up to two additional periods of one year each. Any such extension shall be evidenced by a writing executed by the City Manager, or his or her designee.

3. Compensation.

A. Compensation. As full compensation for Contractor's Services provided under this Agreement, City shall pay Contractor the total sum of **\$80,487.04** (the "Maximum Compensation"), as follows:

- FY 2017/18 \$26,040.00
- FY 2018/19 \$26,821.00
- FY 2019/20 \$27,625.00

If one or both of the one-year option periods referenced in Section 2 are authorized by the City Manager, the Maximum Compensation shall be increased as follows:

- Optional FY 2020/21 \$28,455
- Optional FY 2021/22 \$29,308

The City Manager shall have authority to increase the annual Maximum Compensation by up to 20%, any further increase requires City Council approval.

B. Expenses. The amount set forth in paragraph 3.A. above shall include reimbursement for all actual and necessary expenditures reasonably incurred in the performance of this Agreement.

C. Additional Services. City shall not allow any claims for additional Services performed by Contractor, unless the City Council or City Representative, if applicable, and the Contractor Representative authorize the additional Services in writing prior to Contractor's performance of the additional Services or incurrence of additional expenses. Any additional Services or expenses authorized by the City Council or City Representative shall be compensated at the rates set forth in **Exhibit A**, or, if not specified, at a rate mutually agreed to by the Parties. City shall make payment for additional Services and expenses in accordance with Section 4 of this Agreement.

4. Method of Payment.

A. Invoices. Contractor shall submit to City an invoice, on a monthly basis for the Services performed pursuant to this Agreement. Each invoice shall itemize the Services rendered during the billing period, hourly rates charged, if applicable, and the amount due. City shall review each invoice and notify Contractor in writing within ten business days of receipt of any disputed invoice amounts.

B. Payment. City shall pay all undisputed invoice amounts within 30 calendar days after receipt up to the maximum compensation set forth in Section 3 of this Agreement. City does not pay interest on past due amounts. City shall not withhold federal payroll, state payroll or other taxes, or other similar deductions, from payments made to Contractor.

C. Audit of Records. Contractor shall make all records, invoices, time cards, cost control sheets and other records maintained by Contractor in connection with this Agreement available during Contractor's regular working hours to City for review and audit by City.

5. Independent Contractor. Contractor is, and shall at all times remain as to City, a wholly independent contractor. Contractor shall have no power to incur any debt, obligation, or liability on behalf of City. Neither City nor any of its agents shall have control over the conduct of Contractor or any of Contractor's employees, except as set forth in this Agreement. Contractor shall not, at any time, or in any manner, represent that it or any of its officers, agents or employees are in any manner employees of City.

6. Information and Documents.

A. Contractor covenants that all data, reports, documents, discussion, or other information (collectively "Data") developed or received by Contractor or provided for performance of this Agreement are deemed confidential and shall not be disclosed or released by Contractor without prior written authorization by City. City shall grant such authorization if applicable law requires disclosure. Contractor, its officers, employees, agents, or subcontractors shall not without written authorization from the City Manager or unless requested in writing by the City Attorney, voluntarily provide declarations, letters of support, testimony at depositions, response to interrogatories or other information concerning the work performed under this Agreement or relating to any project or property located within the City. Response to a subpoena or court order

shall not be considered "voluntary," provided Contractor gives City notice of such court order or subpoena.

B. Contractor shall promptly notify City should Contractor, its officers, employees, agents or subcontractors be served with any summons, complaint, subpoena, notice of deposition, request for documents, interrogatories, request for admissions or other discovery request, court order or subpoena from any party regarding this Agreement and the work performed thereunder or with respect to any project or property located within the City. City may, but has no obligation to, represent Contractor or be present at any deposition, hearing or similar proceeding. Contractor agrees to cooperate fully with City and to provide City with the opportunity to review any response to discovery requests provided by Contractor. However, City's right to review any such response does not imply or mean the right by City to control, direct or rewrite the response.

C. All Data required to be furnished to City in connection with this Agreement shall become City's property, and City may use all or any portion of the Data submitted by Contractor as City deems appropriate. Upon completion of, or in the event of termination or suspension of this Agreement, all original documents, designs, drawings, maps, models, computer files containing data generated for the Services, surveys, notes, and other documents prepared in the course of providing the Services shall become City's sole property and may be used, reused or otherwise disposed of by City without Contractor's permission. Contractor may take and retain copies of the written products as desired, but the written products shall not be the subject of a copyright application by Contractor.

D. Contractor's covenants under this Section 6 shall survive the expiration or termination of this Agreement.

7. Conflicts of Interest. Contractor and its officers, employees, associates and subcontractors, if any, shall comply with all conflict of interest statutes of the State of California applicable to Contractor's Services under this Agreement, including the Political Reform Act (Gov. Code § 81000, *et seq.*) and Government Code Section 1090. During the term of this Agreement, Contractor may perform similar Services for other clients, but Contractor and its officers, employees, associates and subcontractors shall not, without the City Representative's prior written approval, perform work for another person or entity for whom Contractor is not currently performing work that would require Contractor or one of its officers, employees, associates or subcontractors to abstain from a decision under this Agreement pursuant to a conflict of interest statute. Contractor shall incorporate a clause substantially similar to this Section 7 into any subcontract that Contractor executes in connection with the performance of this Agreement.

8. Indemnification.

A. Indemnities for Third Party Claims.

1) To the fullest extent permitted by law, Contractor shall, at its sole cost and expense, defend, hold harmless and indemnify City and its elected officials, officers, attorneys, agents, employees, designated volunteers, successors, assigns and those City agents serving as independent contractors in the role of City officials (collectively "Indemnitees"), from and against any and all damages, costs, expenses, liabilities, claims, demands, causes of action, proceedings, expenses, judgments, penalties, liens, and losses of any nature whatsoever, including fees of accountants, attorneys, or other professionals and all costs associated therewith and the payment of all consequential damages (collectively "Liabilities"), in law or equity, whether actual, alleged or threatened, which arise out of, are claimed to arise out of, pertain to, or relate to the acts or omissions of Contractor, its officers, agents, servants, employees, subcontractors, materialmen, contractors or their officers, agents, servants or employees (or any entity or individual that Contractor shall bear the legal liability thereof) in the performance of this Agreement, including the Indemnitees' active or passive negligence, except for Liabilities arising from the sole negligence or willful misconduct of the Indemnitees, as determined by final arbitration or court decision or by the agreement of the Parties. Contractor shall defend the Indemnitees in any action or actions filed in connection with any Liabilities with counsel of the Indemnitees' choice, and shall pay all costs and expenses, including all attorneys' fees and experts' costs actually incurred in connection with such defense. Contractor shall reimburse the Indemnitees for any and all legal expenses and costs incurred by Indemnitees in connection therewith.

2) Contractor shall pay all required taxes on amounts paid to Contractor under this Agreement, and indemnify and hold City harmless from any and all taxes, assessments, penalties, and interest asserted against City by reason of the independent contractor relationship created by this Agreement. Contractor shall fully comply with the workers' compensation law regarding Contractor and Contractor's employees. Contractor shall indemnify and hold City harmless from any failure of Contractor to comply with applicable workers' compensation laws. City may offset against the amount of any fees due to Contractor under this Agreement any amount due to City from Contractor as a result of Contractor's failure to promptly pay to City any reimbursement or indemnification arising under this subparagraph A.2).

3) Contractor shall obtain executed indemnity agreements with provisions identical to those in this Section 8 from each and every subcontractor or any other person or entity involved by, for, with or on behalf of Contractor in the performance of this Agreement. If Contractor fails to obtain such indemnity obligations, Contractor shall be fully responsible and indemnify, hold harmless and defend the Indemnitees from and against any and all Liabilities at law or in equity, whether actual, alleged or threatened, which arise out of, are claimed to arise out of, pertain to, or relate to the acts or omissions of Contractor's subcontractor, its officers, agents, servants, employees, subcontractors, materialmen, contractors or their officers, agents, servants or employees (or any entity or individual that Contractor's subcontractor shall bear the legal liability thereof) in the performance of this Agreement, including the Indemnitees' active or passive negligence, except for Liabilities arising from the sole negligence or willful misconduct of the Indemnitees, as determined by final arbitration or court decision or by the agreement of the Parties.

B. Workers' Compensation Acts not Limiting. Contractor's indemnifications and obligations under this Section 8, or any other provision of this Agreement, shall not be limited by the provisions of any workers' compensation act or similar act. Contractor expressly waives its statutory immunity under such statutes or laws as to City, its officers, agents, employees and volunteers.

C. Insurance Requirements not Limiting. City does not, and shall not, waive any rights that it may possess against Contractor because of the acceptance by City, or the deposit with City, of any insurance policy or certificate required pursuant to this Agreement. The indemnities in this Section 8 shall apply regardless of whether or not any insurance policies are determined to be applicable to the Liabilities, tax, assessment, penalty or interest asserted against City.

D. Survival of Terms. Contractor's indemnifications and obligations under this Section 8 shall survive the expiration or termination of this Agreement.

9. Insurance.

A. Minimum Scope and Limits of Insurance. Contractor shall procure and at all times during the term of this Agreement carry, maintain, and keep in full force and effect, insurance as follows:

1) Commercial General Liability Insurance with a minimum limit of \$2,000,000.00 per occurrence for bodily injury, personal injury and property damage and a general aggregate limit of \$2,000,000.00 per project or location. If Contractor is a limited liability company, the commercial general liability coverage shall be amended so that Contractor and its managers, affiliates, employees, agents and other persons necessary or incidental to its operation are insureds.

2) Automobile Liability Insurance for any owned, non-owned or hired vehicle used in connection with the performance of this Agreement with a combined single limit of \$2,000,000.00 per accident for bodily injury and property damage. If Contractor does not use any owned, non-owned or hired vehicles in the performance of Services under this Agreement, Contractor shall obtain a non-owned auto endorsement to the Commercial General Liability policy required under subparagraph A.1) of this Section 9.

3) Workers' Compensation Insurance as required by the State of California and Employer's Liability Insurance with a minimum limit of \$1,000,000.00 per accident for bodily injury or disease. If Contractor has no employees while performing Services under this Agreement, workers' compensation policy is not required, but Contractor shall execute a declaration that it has no employees.

4) Professional Liability [Errors and Omissions] Insurance with minimum limits of \$2,000,000.00 per claim and in aggregate.

B. Acceptability of Insurers. The insurance policies required under this Section 9 shall be issued by an insurer admitted to write insurance in the State of California with a rating of A:VII or better in the latest edition of the A.M. Best Insurance

Rating Guide. Self insurance shall not be considered to comply with the insurance requirements under this Section 9.

C. Additional Insured. The commercial general and automobile liability policies shall contain an endorsement naming City, its officers, employees, agents and volunteers as additional insureds.

D. Primary and Non-Contributing. The insurance policies required under this Section 9 shall apply on a primary non-contributing basis in relation to any other insurance or self-insurance available to City. Any insurance or self-insurance maintained by City, its officers, employees, agents or volunteers, shall be in excess of Contractor's insurance and shall not contribute with it.

E. Contractor's Waiver of Subrogation. The insurance policies required under this Section 9 shall not prohibit Contractor and Contractor's employees, agents or subcontractors from waiving the right of subrogation prior to a loss. Contractor hereby waives all rights of subrogation against City.

F. Deductibles and Self-Insured Retentions. Any deductibles or self-insured retentions must be declared to and approved by City. At City's option, Contractor shall either reduce or eliminate the deductibles or self-insured retentions with respect to City, or Contractor shall procure a bond guaranteeing payment of losses and expenses.

G. Cancellations or Modifications to Coverage. Contractor shall not cancel, reduce or otherwise modify the insurance policies required by this Section 9 during the term of this Agreement. The commercial general and automobile liability policies required under this Agreement shall be endorsed to state that should the issuing insurer cancel the policy before the expiration date, the issuing insurer will endeavor to mail 30 days' prior written notice to City. If any insurance policy required under this Section 9 is canceled or reduced in coverage or limits, Contractor shall, within two business days of notice from the insurer, phone, fax or notify City via certified mail, return receipt requested, of the cancellation of or changes to the policy.

H. City Remedy for Noncompliance. If Contractor does not maintain the policies of insurance required under this Section 9 in full force and effect during the term of this Agreement, or in the event any of Contractor's policies do not comply with the requirements under this Section 9, City may either immediately terminate this Agreement or, if insurance is available at a reasonable cost, City may, but has no duty to, take out the necessary insurance and pay, at Contractor's expense, the premium thereon. Contractor shall promptly reimburse City for any premium paid by City or City may withhold amounts sufficient to pay the premiums from payments due to Contractor.

I. Evidence of Insurance. Prior to the performance of Services under this Agreement, Contractor shall furnish City's Risk Manager with a certificate or certificates of insurance and all original endorsements evidencing and effecting the coverages required under this Section 9. The endorsements are subject to City's approval. Contractor may provide complete, certified copies of all required insurance policies to City. Contractor shall maintain current endorsements on file with City's Risk Manager.

Contractor shall provide proof to City's Risk Manager that insurance policies expiring during the term of this Agreement have been renewed or replaced with other policies providing at least the same coverage. Contractor shall furnish such proof at least two weeks prior to the expiration of the coverages.

J. Indemnity Requirements not Limiting. Procurement of insurance by Contractor shall not be construed as a limitation of Contractor's liability or as full performance of Contractor's duty to indemnify City under Section 8 of this Agreement.

K. Subcontractor Insurance Requirements. Contractor shall require each of its subcontractors that perform Services under this Agreement to maintain insurance coverage that meets all of the requirements of this Section 9.

10. Mutual Cooperation.

A. City's Cooperation. City shall provide Contractor with all pertinent Data, documents and other requested information as is reasonably available for Contractor's proper performance of the Services required under this Agreement.

B. Contractor's Cooperation. In the event any claim or action is brought against City relating to Contractor's performance of Services rendered under this Agreement, Contractor shall render any reasonable assistance that City requires.

11. Records and Inspections. Contractor shall maintain complete and accurate records with respect to time, costs, expenses, receipts, correspondence, and other such information required by City that relate to the performance of the Services. All such records shall be maintained in accordance with generally accepted accounting principles and shall be clearly identified and readily accessible. Contractor shall provide free access to City, its designees and representatives at reasonable times, and shall allow City to examine and audit the books and records, to make transcripts therefrom as necessary, and to inspect all work, data, documents, proceedings and activities related to this Agreement. Such records, together with supporting documents, shall be maintained for a period of three years after receipt of final payment.

12. Termination of Agreement.

A. Right to Terminate. City may terminate this Agreement at any time, at will, for any reason or no reason, after giving written notice to Contractor at least five calendar days before the termination is to be effective. Contractor may terminate this Agreement at any time, at will, for any reason or no reason, after giving written notice to City at least 60 calendar days before the termination is to be effective.

B. Obligations upon Termination. Contractor shall cease all work under this Agreement on or before the effective date of termination specified in the notice of termination. In the event of City's termination of this Agreement due to no fault or failure of performance by Contractor, City shall pay Contractor based on the percentage of work satisfactorily performed up to the effective date of termination. In no event shall Contractor be entitled to receive more than the amount that would be paid to Contractor for the full performance of the Services required by this Agreement. Contractor shall

have no other claim against City by reason of such termination, including any claim for compensation.

13. Force Majeure. Contractor shall not be liable for any failure to perform its obligations under this Agreement if Contractor presents acceptable evidence, in City's sole judgment, that such failure was due to strikes, lockouts, labor disputes, embargoes, acts of God, inability to obtain labor or materials or reasonable substitutes for labor or materials, governmental restrictions, governmental regulations, governmental controls, judicial orders, enemy or hostile governmental action, civil commotion, fire or other casualty, or other causes beyond Contractor's reasonable control and not due to any act by Contractor.

14. Default.

A. Contractor's failure to comply with the provisions of this Agreement shall constitute a default. In the event that Contractor is in default for cause under the terms of this Agreement, City shall have no obligation or duty to continue compensating Contractor for any work performed after the date of default.

B. If the City Manager or his delegate determines that Contractor is in default in the performance of any of the terms or conditions of this Agreement, City shall serve Contractor with written notice of the default. Contractor shall have ten calendar days after service upon it of the notice in which to cure the default by rendering a satisfactory performance. In the event that Contractor fails to cure its default within such period of time, City may, notwithstanding any other provision of this Agreement, terminate this Agreement without further notice and without prejudice to any other remedy to which it may be entitled at law, in equity or under this Agreement.

15. Notices. Any notice, consent, request, demand, bill, invoice, report or other communication required or permitted under this Agreement shall be in writing and conclusively deemed effective: (a) on personal delivery, (b) on confirmed delivery by courier service during Contractor's and City's regular business hours, or (c) three business days after deposit in the United States mail, by first class mail, postage prepaid, and addressed to the Party to be notified as set forth below:

If to City:
Attn: Sean Roberts
City of Manhattan Beach
1400 Highland Avenue
Manhattan Beach, California 90266
Telephone: (310) 466-0942
Email: sroberts@citymb.info

If to Contractor:
Attn: Denis Davis, General Manager
Schindler Elevator Corporation.
16450 Foothill Blvd., Ste. 200
Sylmar, CA 91344-1036
Telephone: (818) 336-3000
Email: denis.davis@us.schlinder.com

With a courtesy copy to:

Quinn M. Barrow, City Attorney

1400 Highland Avenue
Manhattan Beach, California 90266
Telephone: (310) 802-5061
Email: qbarrow@citymb.info

16. Non-Discrimination and Equal Employment Opportunity. In the performance of this Agreement, Contractor shall not discriminate against any employee, subcontractor or applicant for employment because of race, color, religious creed, sex, gender, gender identity, gender expression, marital status, national origin, ancestry, age, physical disability, mental disability, medical condition, genetic information, sexual orientation or other basis prohibited by law. Contractor will take affirmative action to ensure that subcontractors and applicants are employed, and that employees are treated during employment, without regard to their race, color, religious creed, sex, gender, gender identity, gender expression, marital status, national origin, ancestry, age, physical disability, mental disability, medical condition, genetic information or sexual orientation.

17. Prohibition of Assignment and Delegation. Contractor shall not assign any of its rights or delegate any of its duties under this Agreement, either in whole or in part, without City's prior written consent. City's consent to an assignment of rights under this Agreement shall not release Contractor from any of its obligations or alter any of its primary obligations to be performed under this Agreement. Any attempted assignment or delegation in violation of this Section 17 shall be void and of no effect and shall entitle City to terminate this Agreement. As used in this Section 17, "assignment" and "delegation" means any sale, gift, pledge, hypothecation, encumbrance or other transfer of all or any portion of the rights, obligations, or liabilities in or arising from this Agreement to any person or entity, whether by operation of law or otherwise, and regardless of the legal form of the transaction in which the attempted transfer occurs.

18. No Third Party Beneficiaries Intended. This Agreement is made solely for the benefit of the Parties to this Agreement and their respective successors and assigns, and no other person or entity may have or acquire a right by virtue of this Agreement.

19. Waiver. No delay or omission to exercise any right, power or remedy accruing to City under this Agreement shall impair any right, power or remedy of City, nor shall it be construed as a waiver of, or consent to, any breach or default. No waiver of any breach, any failure of a condition, or any right or remedy under this Agreement shall be (1) effective unless it is in writing and signed by the Party making the waiver, (2) deemed to be a waiver of, or consent to, any other breach, failure of a condition, or right or remedy, or (3) deemed to constitute a continuing waiver unless the writing expressly so states.

20. Final Payment Acceptance Constitutes Release. The acceptance by Contractor of the final payment made under this Agreement shall operate as and be a

release of City from all claims and liabilities for compensation to Contractor for anything done, furnished or relating to Contractor's work or services. Acceptance of payment shall be any negotiation of City's check or the failure to make a written extra compensation claim within ten calendar days of the receipt of that check. However, approval or payment by City shall not constitute, nor be deemed, a release of the responsibility and liability of Contractor, its employees, sub-contractors and agents for the accuracy and competency of the information provided and/or work performed; nor shall such approval or payment be deemed to be an assumption of such responsibility or liability by City for any defect or error in the work prepared by Contractor, its employees, sub-contractors and agents.

21. Corrections. In addition to the above indemnification obligations, Contractor shall correct, at its expense, all errors in the work which may be disclosed during City's review of Contractor's report or plans. Should Contractor fail to make such correction in a reasonably timely manner, such correction may be made by City, and the cost thereof shall be charged to Contractor. In addition to all other available remedies, City may deduct the cost of such correction from any retention amount held by City or may withhold payment otherwise owed Contractor under this Agreement up to the amount of the cost of correction.

22. Non-Appropriation of Funds. Payments to be made to Contractor by City for services performed within the current fiscal year are within the current fiscal budget and within an available, unexhausted fund. In the event that City does not appropriate sufficient funds for payment of Contractor's services beyond the current fiscal year, the Agreement shall cover payment for Contractor's services only to the conclusion of the last fiscal year in which City appropriates sufficient funds and shall automatically terminate at the conclusion of such fiscal year.

23. Exhibits. Exhibits A and B constitute a part of this Agreement and are incorporated into this Agreement by this reference. If any inconsistency exists or arises between a provision of this Agreement and a provision of any exhibit, or between a provision of this Agreement and a provision of Contractor's proposal, the provisions of this Agreement shall control.

24. Entire Agreement and Modification of Agreement. This Agreement and all exhibits referred to in this Agreement constitute the final, complete and exclusive statement of the terms of the agreement between the Parties pertaining to the subject matter of this Agreement and supersede all other prior or contemporaneous oral or written understandings and agreements of the Parties. No Party has been induced to enter into this Agreement by, nor is any Party relying on, any representation or warranty except those expressly set forth in this Agreement. This Agreement may not be amended, nor any provision or breach hereof waived, except in a writing signed by both Parties.

25. Headings. The headings in this Agreement are included solely for convenience of reference and shall not affect the interpretation of any provision of this Agreement or any of the rights or obligations of the Parties to this Agreement.

26. Word Usage. Unless the context clearly requires otherwise, (a) the words “shall,” “will” and “agrees” are mandatory and “may” is permissive; (b) “or” is not exclusive; and (c) “includes” or “including” are not limiting.

27. Time of the Essence. Time is of the essence in respect to all provisions of this Agreement that specify a time for performance; provided, however, that the foregoing shall not be construed to limit or deprive a Party of the benefits of any grace or use period allowed in this Agreement.

28. Business Days. “Business days” means days Manhattan Beach City Hall is open for business.

29. Governing Law and Choice of Forum. This Agreement, and any dispute arising from the relationship between the Parties to this Agreement, shall be governed by and construed in accordance with the laws of the State of California, except that any rule of construction to the effect that ambiguities are to be resolved against the drafting party shall not be applied in interpreting this Agreement. Any dispute that arises under or relates to this Agreement (whether contract, tort or both) shall be resolved in a superior or federal court with geographic jurisdiction over the City of Manhattan Beach.

30. Attorneys’ Fees. In any litigation or other proceeding by which a Party seeks to enforce its rights under this Agreement (whether in contract, tort or both) or seeks a declaration of any rights or obligations under this Agreement, the prevailing Party shall be entitled to recover actual attorneys’ fees, experts’ fees, and other costs, in addition to all other relief to which that Party may be entitled.

31. Severability. If a court of competent jurisdiction holds any provision of this Agreement to be illegal, invalid or unenforceable for any reason, the validity of and enforceability of the remaining provisions of this Agreement shall not be affected and continue in full force and effect.

32. Counterparts. This Agreement may be executed in multiple counterparts, all of which shall be deemed an original, and all of which will constitute one and the same instrument.

33. Corporate Authority. Each person executing this Agreement on behalf of his or her Party warrants that he or she is duly authorized to execute this Agreement on behalf of that Party and that by such execution, that Party is formally bound to the provisions of this Agreement.

[SIGNATURE PAGE FOLLOWS]

The Parties, through their duly authorized representatives are signing this Agreement on the date stated in the introductory clause.

City:

City of Manhattan Beach,
a California municipal corporation

Contractor:

Schindler Elevator Corporation,
A Delaware corporation

By: _____
Name: _____
Title: _____

By: _____
Name: _____
Title: _____

ATTEST:

By: _____
Name: _____
Title: _____

By: _____
Name: Liza Tamura
Title: City Clerk

**PROOF OF AUTHORITY TO BIND CONTRACTING
PARTY REQUIRED**

APPROVED AS TO FORM:

By: _____
Name: Quinn M. Barrow
Title: City Attorney

APPROVED AS TO CONTENT:

By: _____
Name: Bruce Moe
Title: Finance Director

EXHIBIT A
SCOPE OF SERVICE – *See Attached*

Exhibit "A"



Schindler

February 24, 2017

City of Manhattan Beach
Attn: Mr. Sean Roberts

Schindler Elevator Corporation
16450 Foothill Blvd., Ste. 200
Sylmar, CA 91342-1036
Telephone: (818) 336-3000
Facsimile: (818) 336-3076

COMPANY PROFILE

Please describe your capabilities as listed below and in sufficient detail and scope to provide a meaningful evaluation, comparison, and assessment (in the same order as below):

1. Schindler Elevator Corporation
2. 16450 Foothill Blvd
3. Sylmar, CA 91342
4. Ryan Haines / 818-231-7713 / ryan.haines@us.schindler.com
5. 5 years in elevator business
6. 6 total mechanics in the area:
 - a. Rudy Gutierrez – elevator route mechanic (primary)
 - b. Ralph Penilla – elevator route mechanic
 - c. Jerry Piro – elevator route mechanic
 - d. Mike Luna – elevator trouble shooter
 - e. Mike Gomez – escalator route mechanic
 - f. Patrick Linares – escalator troubleshooter
7. Rudy is the primary route mechanic with both Ralph and Jerry within 1 hour of Manhattan Beach. All specialize in elevators. Mike Gomez is within one hour of Manhattan Beach and specializes in escalators. All mechanics bring their work trucks home with them and we have on call staff available 24 hours per day, 7 days per week.
8. Rudy's normal business hours are 7 am to 3:30 pm Monday through Friday. Travel time for billing purposes outside of the scope of this agreement are billed as they are used adhering to the following rates:
 - a. Normal working hours: \$422.44
 - b. Overtime working hours: \$718.15
 - c. Holiday working hours: \$844.88
9. Pricing is in line with industry average. Specific guidelines are not industry standard with differing overhead costs and parts costs.
10. No other relevant fees will be charged.
11. License #: 375733
12. DIR registration number: 1000012845
13. Schindler provides some of the highest quality mechanics and industry practices with a strong safety record within the industry.

Respectfully yours,

Ryan Haines

Ryan Haines
Existing Installations Sales Representative

cc Job File



City of Manhattan Beach General Services

Phone: (310) 802-5568
FAX: (310) 802-5590
TDD: (310) 546-3501

REQUEST FOR PROPOSAL

BID NUMBER:	1110-17
BID TITLE:	Elevator & Escalator Maintenance Services
REQUESTING DEPARTMENT:	Public Works
RELEASE DATE:	January 18, 2017
DUE DATE:	Friday, February 24, 2017 @ 3:00 P.M. PST

Notice is hereby given that the Office of the City Clerk of the City of Manhattan Beach will receive proposals. Each proposal must be submitted in a sealed envelope and clearly marked:

"RFP # 1110-17, Elevator & Escalator Services"

Failure to identify the proposal on the envelope may result in disqualification of the proposal.

Sealed proposals must be submitted to the office of the City Clerk at 1400 Highland Avenue, Manhattan Beach, CA 90266. **Proposals will be received until 3:00 PM PST, Friday, February 24, 2017.**

Proposals will not be opened at that time, but will be submitted to the City Clerk's Office for verification and compliance with Specifications and subsequent recommendation to City Council for award of a contract or rejection of the responses, as deemed appropriate. The City reserves the right to make no award.

Proposals received after the deadline will be considered late. Such proposals may be returned unopened. Faxed or emailed proposals are not acceptable.

Please direct any inquiries regarding this RFP to Gwen Eng, geng@citymb.info, by no later than 4:00 PM PST, Friday, January 27, 2017.

Dated: This 18th Day of January, 2017

Gwen Eng
Purchasing Manager

Instructions to Bidders/Definitions

The following meanings are attached to the following defined words when used in these specifications and the contract: The word "City" means the City of Manhattan Beach, California. The word "Bidder" "Vendor," "Supplier," or "Contractor" means the person, firm, or corporation submitting a bid on these specifications or any part thereof.

Filing Date

All bids must be received at or before the time indicated above. Copies of all forms, specifications, and exhibits are available from the office of the Purchasing Agent for the City of Manhattan Beach (310) 802-5567.

Reservations

The City Council reserves the right to reject any and all bids received; to take all bids under advisement for up to 90 days after opening; to waive any informality on any bid; and to be the sole judges of the relative merits of the material mentioned in the respective bids received. The Council also reserves the right to reject any item(s), award more than one contract for each of the items, and reject bids that are not accompanied by the requested information.

Bid Form

- The Bid must be enclosed in an envelope, 2 copies, and marked "RFP #1110-17- Elevator & Escalator Services" showing the bid number and addressed to the City Clerk, City Hall, Manhattan Beach, California.
- **No telephone or facsimile bids will be accepted.**
- If the bid is made by an individual, it must be signed by the full name of the Bidder and include the Bidder's complete address. If it is made by a firm, it must be signed with the co-partnership name by a member of the firm, and the name and full address of each member must be given. If it is made by a corporation, it must be signed by the proper officer in the corporate name, and the corporate seal must be attached to such signature.
- Blank spaces in the Bid must be properly filled in using ink or typewriter.
- The phraseology of the bid must not be altered in any way.
- Bids are subject to acceptance by the City for a period of 90 days, unless a different period is prescribed in the Bid by the bidder.
- Bid results are available by calling the office of the Purchasing Agent at (310) 802-5569.

Electronic Format

Submit the complete proposal on a labeled media (Company name) in searchable PDF format as a single document (optimized and compressed). The naming convention for the file is "1110-17 company name"

The Contract

The Bidder to whom the award is made will be required to enter into a written contract with the City. The contract may be in the form of a purchase order. A copy of the Notice Inviting Bids, the vendor Bid, and the contract specifications may be attached to, and will form a part of the contract. All materials, supplies, equipment, and services supplied by the vendor shall conform to the applicable requirements of City and Federal Laws covering Labor and Wages, as well as conforming to the specifications herein. In case of default by the vendor, the City reserves the right to procure the articles from other sources and to hold the vendor responsible for any excess costs incurred by the City.

Patent Rights

The vendor agrees to save, keep, bear harmless, and fully indemnify the City, its officers, or agents, from all damages, costs, or expenses in law or equity that may at any time arise or be set up for any infringement of the patent rights or any person or persons in consequence of the use by the City, or any of their officers and agents, or articles supplies under any resulting contract, and of which the vendor is not the patentee or assignee, or which the vendor is not lawfully entitled to sell.

Taxes

The City of Manhattan Beach is exempt from paying Federal Excise Taxes. These taxes are not to be included.

Delivery

All deliveries of such items to be furnished must be made to job sites or City warehouse within the boundaries of the City of Manhattan Beach. Where a specific delivery schedule is required, proximity to that schedule will be a consideration.

Payments

Complete payment on the contract will be made in approximately 30 days from the complete delivery and acceptance of the merchandise or service, unless alternate terms are proposed and accepted by the City.

The City may consider prompt payment discounts when calculating the lowest bid if the end result benefits the City.

Errors/Omissions

The vendor shall not be allowed to take advantage of any errors and/or omissions in these specifications or in the vendor's specifications submitted with the Bid. Full instructions will be given if such errors/omissions are discovered, and vendor agrees to abide by said instructions.

Force Majeure

The vendor will be excused from the performance of the contract, in whole or in part, only by reason of the following causes:

- a) When such performance is prevented by operation of law.
- b) When such performance is prevented by an irresistible superhuman cause.
- c) When such performance is prevented by an act of the public enemies of the United States of America, or the City of Manhattan Beach, or by strike, mob violence, fire, delay in transportation beyond the control of the vendor, or unavoidable casualty.
- d) When such performance is prevented by the inability of the vendor to secure necessary materials, supplies, or equipment by reason of:
 1. Appropriation of use thereof by the Federal Government or,
 2. Regulations imposed by the Federal Government.

No other Force Majeure clauses or conditions may be inserted in this bid and any changes in the conditions herein will cause the bid to be rejected.

Default

If the vendor fails in any manner to fully perform and carry out each and all of the terms, covenants, and conditions of the award, then the vendor is in default of the contract. The vendor shall be notified in writing of the default status, and will be given a time frame in which to comply. If the vendor fails to comply within the time frame given, the City, at its option, may terminate or cancel the contract, and at the expense of the Contractor, complete the contract with an alternate Contractor. Such termination shall not affect or terminate any of the rights of the City against the vendor, or which may thereafter accrue because of such default. The foregoing provision shall be in addition to all other rights and remedies available to

the City under law. The waiver of a breach of any term, covenant, or a condition hereof shall not operate as a waiver of any subsequent breach of the same or any other term, covenant, or condition hereof.

Business License

The successful Contractor (X) will () will not be required to procure a City of Manhattan Beach Business License prior to commencing work. For more information, contact Business Licenses at (310) 802-5492.

Contract Extension to Other Cities/Agencies

Other Cities/Agencies may be interested in purchasing against an awarded contract, subject to the same price, terms and conditions offered to the City of Manhattan Beach, and by mutual agreement by the City and the vendor. The City does not warrant any additional use of the contract by such agencies. All requirements of the specifications, purchase orders, invoices and payments with other agencies will be directly handled by the successful Bidder and the piggybacking agency.

Department Policy for Grant Funded Purchases

Contractor guarantees that it, its employees, Contractors, subcontractors or agents (collectively "Contractor") are not suspended, debarred, excluded, or ineligible for participation in Medicare, Medi-Cal or any other federal or City funded health care program, or from receiving Federal funds as listed in the List of Parties Excluded from Federal Procurement or Non-procurement Programs issued by the Federal General Services Administration. Contractor must within 30 calendar days advise the City if, during the term of this Agreement, Contractor becomes suspended, debarred, excluded or ineligible for participation in Medicare, Medi-Cal or any other federal or City funded health care program, as defined by 42 U.S.C. 1320a-7b(f), or from receiving Federal funds as listed in the List of Parties Excluded from Federal Procurement or Non-procurement Programs issued by the Federal General Services Administration. Contractor will indemnify, defend and hold the City harmless for any loss or damage resulting from the conviction, debarment, exclusion or ineligibility of the Contractor.

Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion - Lower Tier Covered Transaction

- 1) The prospective lower tier participant certifies, by submission of this bid, that neither it nor its Principals [as defined at 49 C.F.R. section 29.105(p)] is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.
- 2) When the prospective lower tier participant is unable to certify to the City its certification, such prospective participant shall attach an explanation to this bid.

City of Manhattan Beach
RFP #1110-17 – Elevator & Escalator Maintenance Services

Purpose

The City of Manhattan Beach is soliciting proposals for an elevator & escalator service agreement; preventative maintenance and repair. It is the intent of this specification to describe the requirements for the service agreement. The service shall conform to, and the bidder's proposal shall include, all provisions of the following specification.

Contractors may respond to any portion of these specifications. (Elevator maintenance, escalator maintenance and/or wheelchair lifts).

Subcontracting

No portion of this work may be subcontracted.

Project Background

The City has 4 elevators, 4 escalators and 4 wheelchair lifts at several facilities that must be maintained in working order for residents, visitors and businesses.

Submittal of Proposals

An original and one copy of the proposal shall be submitted. Proposals should be limited to no more than 50 pages (single sided). In addition, submit the complete proposal on a labeled media (Company name) in searchable PDF format as a single document (optimized and compressed). The naming convention for the file is "1110-17 company name"

Questions

Questions that require an interpretation of the RFP requirements or submittal of proposals must be directed to the Purchasing Manager at geng@citymb.info and received not later than January 27, 2017 at 4:00 pm PST. Written responses will be posted on the City's purchasing webpage at the following URL: <http://www.citymb.info/businesses/bid-opportunities> as well as on BidSync at www.bidsync.com. It is the responsibility of the vendor to self-register as a vendor to receive automatic notifications of any addenda that are released.

Discussions, interviews and negotiations may be held with the vendor under final consideration prior to making a selection for award; however, proposals may be accepted without such discussions, interview and negotiations.

Project Management

The contract will be managed for operational compliance by the Public Works Department.

Responsibilities of the Contractor

Coordinate and work with Public Works Department staff or designated contact in a timely fashion.

Scope of Work

Vendor will provide complete service and maintenance of the equipment covered under these specifications. The vendor must maintain equipment so it is operational at least 98% of the time for a 24/7 period. Vendor shall perform regular preventative maintenance checks (as recommended by the manufacturer), repairs, monthly inspections, annual safety inspections, and emergency service. The agreement will include all labor, parts, supplies, oil, lubricants, and any other materials required to maintain the equipment in good and safe operating conditions. Vendor shall provide certified trained technicians to perform all maintenance and repairs. Vendor must maintain an adequate inventory of replacement parts and materials.

All equipment, materials and installation shall conform to the most recently adopted edition of the following codes:

ANSI/ASME, A17.1, the American National Standard Safety Code for Elevators and Escalators

ANSI/ASME, A17.2, Inspectors manual for elevators and escalators

Site Inspection

Contractor may view all locations without an appointment.

Evaluation Criteria

Proposals will be evaluated on the basis of their response to all provisions to this RFP. If an award is made, the City will select a contractor based on the below-indicated criteria (in no particular order). The criteria listed are not necessarily an all-inclusive list. The order in which they appear is not intended to indicate their relative importance:

1. Bidder's responsiveness to the specifications
2. Personnel assigned to the service, including work experience and certifications
3. Typical response time
4. Proposal cost
5. References from local clients
6. Warranties offered
7. Ability to fulfill the City's insurance requirements

Note that one or more contracts may be awarded from this solicitation. One for elevators, one for escalators and one for wheelchair lifts if unable to perform on all three equipment types.

Specifications

Equipment Performance:

Elevators

The elevators shall be adjusted to meet the following performance standards and shall maintain these standards for the term of the agreement.

1. Floor-to-floor time shall be measured from the time a car leaves a floor, travels one floor up or down, and the doors are $\frac{3}{4}$ open.
2. Door times shall be in accordance with current standards.
3. Leveling accuracy under load conditions shall be $\pm \frac{3}{8}$ of an inch.
4. Elevators starting, acceleration, stopping and leveling shall be smooth and free from jars or bumps. Full speed riding shall be without swaying or vibration. Elevator and door operation shall be quiet. Stop made under operation of Emergency Stop Switch shall be more rapid than a routine stop, but not violent.
5. Door pressure shall be maintained below 30 pounds in closing.

Preventive Maintenance

Vendor shall maintain all equipment under this contract as recommended by manufacturer and required by local laws and ordinances. Vendor will be responsible for proper maintenance of all equipment under this contract. Omission of any items from these specifications will not relieve vendor of that responsibility.

Monthly Service

During the monthly service, the technician shall:

- a. Examine, adjust, lubricate, clean, repair and replace pumps, motors, muffler and controller parts, valves, valve magnet coils, valve motors, packing, windings, rotating elements, and all electrical and mechanical parts, as required to provide safe, properly maintained, operable elevators in accordance with manufacturer's recommendations.
- b. Clean Brush guide rails and beams, top of cars, bottom of platforms and machine room floors.
- c. Remove all accumulated rubbish from the pits.
- d. Make all repairs required to restore the elevators to the required level of performance.

Unless contradicted by manufacturer's standard requirements, during the monthly inspection, the technician shall examine, adjust, lubricate, clean, repair and replace the following as required:

Hydraulic	pump, motor, muffler and controller parts, valves, valve magnet coils, valve motors, packing elevators: windings, rotating elements and all electrical and mechanical parts.
Machine:	including worn gear, thrust bearings, drive sheave, drive sheave shaft bearings, brake coil, brake linings and components (dumbwaiter only).
Motor:	including motor windings, bearings, rotating element, commutators, brushes, and brush holders.
Controller:	including relays, resistors, contacts, coils, leads, transformers, timing devices and solid state components.

Dispatching Eqp: including relays, resistors, contacts, coils, leads, transformers, timing devices and solid state equipment.

Selector: including electrical or mechanical drive components, cams, contacts, relays, resistors, leads, and transformers.

Car: including power door operator, door protective devices, car door hangers, car door contact, load weighing equipment, car safety devices, car guide shoes including roller guides.

Hoistway: including buffers, hoistway and machine room wiring, hoistway door interlocks, hoistway door hanger, gibs and auxiliary closer, emergency lowering devices.

Accessory Eqp: including all accessory elevator equipment installed prior to commencement of this agreement unless excluded in the exception paragraph.

Wire Ropes: renew all wire ropes as often as is necessary to maintain an adequate factor of safety; equalize the tension on all hoisting ropes, and repair or replace conductor cables (dumbwaiter only).

Telephones: lift emergency telephone and verify communications with answering service.

Escalator

Handrail: Handrail drive chains, handrail brush guards, handrail guide rollers, alignment devices and handrails.

Steps: Step tread, step wheels, step chains, step axle bushing, comb plates, floor plates and tracks

Drive Unit: Drive bearings, tension sprocket and upper and lower newel bearings.

Where applicable, technician shall make periodic checks of the group dispatching and supervisory systems and make all necessary tests and adjustments to maintain design standards.

Testing

All testing shall be such as to permit annual licensing by the State of California. This includes performing all safety tests as required by the American Standard Safety Code for elevators, escalators and wheelchair lifts.

Comment [GE1]: Do these need to be added?

Contractor must be present for pressure relief valve testing on elevators in conjunction with the annual Fire alarm test.

Inspections

The City may require all inspections be done in the presence of an assigned Public Works employee.

Routine Repair Response

Vendor will be responsible for fixing breakdowns for all causes, including equipment failure, vandalism and misuse. A technician must be on-site within two business hours of contact from City that repair is required. All work is to be performed during regular working hours (generally between the hours of 8:00 a.m. and 5:00 p.m., Monday through Friday), unless prior approval is obtained for overtime repairs. **Prior approval by the Maintenance Superintendent or his designee is required for all repairs made on overtime.**

Actual repairs must be approved by the Maintenance Superintendent or his designee, **prior** to commencement of work. Contractor shall post an "OUT OF SERVICE" sign on all entry points when equipment is closed for service or repairs.

Vendor shall notify Sean Roberts, at 310/802-5316 immediately of any condition found affecting the safety of passengers or elevator equipment. No equipment will be shut down, rendered inoperable, etc. without his express approval

Emergency Response

Emergencies are defined as situations affecting safe or continuous operation of equipment covered under this agreement or affecting the safety of passengers. A technician must be on-site within one hour of contact from City that an emergency repair is required. When a passenger is trapped in an elevator, response time must be 1 hour, or less. This service is required 24 hours a day, seven days a week, weekends and holidays included.

Pricing

Vendor shall make repairs as required by all equipment under this contract. Preventive maintenance, and all repairs caused by poor preventive maintenance, must be included in the monthly rates quoted. Vendor shall perform all maintenance at the prices quoted for the annual maintenance contract. Vendor shall perform all non-maintenance service at the hourly rates bid. Vendor shall inform the City in advance of repairs not covered under the maintenance agreement and shall provide a written cost estimate. This requirement is waived for emergency repairs, as defined below. No work may begin until the cost estimate has been received and the work approved by the Maintenance Superintendent or his designee. The City reserves the right to obtain competitive quotes for repairs not covered under the maintenance agreement. If the successful vendor is not consistently the low bidder for these repairs, the City may terminate this agreement.

Travel Time

Vendor will be allowed to charge reasonable travel time for all repairs not covered under the maintenance agreement. Vendors are requested to fully describe travel time costs and policies in your submittal.

Parts and Supplies

Vendor shall maintain a parts inventory including such items as door operating equipment, armatures, controller switches and parts, solid state units, selector tapes and drives, door hangers, brake magnets, limit switches, rectifiers, and other spare lending and replacement parts deemed necessary for continuity of service. All parts shall be original manufacturer or equal.

Vendor will furnish all lubricants, cleaning supplies and tools necessary to perform the work described in these specifications. Vendor must use lubricants recommended by the equipment manufacturer.

The vendor must have maintenance facilities staffed by trained technicians capable of providing high quality maintenance for the equipment bid. The City may inspect the vendor's facilities to determine adequacy.

Annual Safety Inspection

Vendor must conduct an annual safety inspection of all equipment covered under this agreement when State inspector conducts inspections. The cost for this inspection must be included in the monthly maintenance rate quoted.

After each annual inspection, the vendor shall provide an Elevator Inspection Report for each unit.

The report must contain the findings of the inspection and recommendations, particularly those dealing with code deficiencies, hazards and safety, and substandard maintenance.

The report must include cost and lead-time for all necessary repairs. This report must be given to the Maintenance Superintendent or his designee within ten working days of the inspection. Failure to adhere to these requirements will result in termination of the agreement.

Technicians shall record all inspections on the inspection log posted in the machine room. Vendor must notify the Maintenance Superintendent or his designee if an inspection log is not posted in the machine room.

State Inspection

Vendor will make all repairs indicated in State inspection reports within thirty days of notice of State inspection with prior approval by the City. Vendor must provide a quote for these repairs for each unit before beginning work.

The vendor's technician must be present at all State of California inspections. All costs for these services must be included in the monthly maintenance fee. The vendor must maintain a history of inspections performed by the State for all equipment on this contract.

The weekly state inspection for wheelchair lifts will be handled in-house and are not part of this contract. Vendor's technician must be present for any other state mandated inspections.

Pricing Escalation

Proposer shall be able to provide services at the rates set forth on the attached Proposed Price Sheet. Prices shall remain firm for the initial 12 month period of the contract. Prices may be adjusted annually by an amount not to exceed the Consumer Price Index (CPI) for the prior 12-month period. Prices shall then remain firm for the following 12 month period. Under no circumstances will adjustments in the fees exceed three percent (3%) per additional period. Contractor shall notify the City in writing thirty days prior to any proposed price increase. All price increases must be justified with evidence of the increased costs borne by the Contractor.

Permits

It shall be the responsibility of the vendor to notify Maintenance Superintendent or his designee upon the lapse of any and all "Permits to Operate an Elevator" for those elevators included in this contract.

Records

Vendor shall keep all work schedules on display in the respective elevator equipment rooms. Technicians must complete the schedule when he/she works on equipment. The schedules will be maintained throughout the year and used as a guide and checklist.

Vendor shall maintain an accurate and complete log of all work performed and all routine inspections for each piece of equipment covered under this agreement. The log shall include reason for service, date, length of time spent, technician's name, and resolution.

Vendor shall maintain an as-built record of all system modifications. This record shall be delivered to the City at the end of the agreement. Final payment will be withheld until these records and prints are received and verified by the City.

If contractor has an on-line system for records available, please describe in your submittal.

All records must be provided upon request of the Maintenance Superintendent or his designee.

Reports

Upon request, the successful supplier must provide a report of items purchased by the City for the previous six months. This report will be in order of most frequently ordered items to the least frequently ordered items. The following information must be included in the report: product description, total quantity ordered for the period, and total amount spent on the item for the period.

Ad-hoc reports must be available upon request by the Public Works Department personnel.

If contractor has an on-line system for reports accessible by City staff, please describe in your submittal.

Licenses

The successful vendor must hold all required licenses and permits required to perform this work in accordance with Federal, City and local requirements and shall be responsible for all fees resulting there from.

Safety

Supplier shall conform to the rules and regulations pertaining to safety established by the California Division of Industrial Safety. Furnished equipment, materials and services shall comply with all OSHA standards and regulations, and all applicable governmental laws and orders. Supplier shall provide proof of compliance, if requested by the City. Contractor shall be responsible for compliance with all applicable Federal, State, and local safety regulations including any confined space requirements.

Warranty

The Contractor warrants that the work, including equipment and materials, shall conform to professional standards of care and practice in effect at the time the work is performed. Work shall be of the highest quality, and be free from all faults, defects, or errors. Whenever required by the specifications of the RFP, the Contractor warrants that all equipment and materials provided shall be new. Contractor shall warrant all labor and materials for a period of one (1) year from completion of work. The Contractor shall correct such fault, defect, or error, at no additional cost to the City. If Contractor fails to correct the problem under the warranty within a reasonable time, the City may elect to have the work performed by someone else. Contractor shall refund to the City, the charge paid to another contractor, which is attributable to such portions of the faulty, defective or incorrect work. All equipment and materials provided by the Contractor shall be merchantable and fit for the purpose intended. Contractor shall be liable for secondary, incidental, or consequential damages of any nature resulting from any work performed under this Agreement.

Contract Term

The agreement shall be for a term of three (3) years from the date of commencement of contract. If it is mutually agreeable to the Contractor and the City, the term of the agreement may be extended in increments of one year, not to exceed a total contract period of five (5) years. Contract may be cancelled by the City without cause upon immediate notice by the City to the Contractor. The Contractor may cancel the contract upon 90 days written notice to the City.

References

Proposer shall submit references where similar work of similar size and nature is currently in process or recently completed. Include name of firm, telephone, email and name of contract person. These references will be checked and may affect the award of the contract. The City of Manhattan Beach reserves the right to contact any of the organizations or individuals listed or any others that may stem from the inquiry.

COMPANY PROFILE

Please describe your capabilities as listed below and in sufficient detail and scope to provide a meaningful evaluation, comparison, and assessment (in the same order as below):

1. Name of Company
2. Address
3. City/Zip Code
4. Primary Contact Person, Telephone # and E-mail
5. Number of Years in Business
6. Number of Technical Staff that would service this account broken down by specialty and makes/models supported.
7. Name staff located within 1 hour of City of Manhattan Beach for emergency service and their specialty. Are they assigned work vehicles to take home or other method? Please describe emergency response protocol.

8. Describe normal business hours, travel time policies including dispatch location, billing increments and hourly rates (overtime and holidays).
9. What is the mark-up on parts or supplies?
10. Describe all other fees the City will be charged for these services.
11. Provide your C-11 License number and expiration date or equivalent.
12. Provide your DIR registration number.
13. Include additional data and material not specifically requested, but which you feel is essential.

List of equipment (conveyance number in parentheses):

LOCATION	Address	Monthly maintenance	5-year load test
Elevators			
City Hall (#061229) – [Montgomery]	1400 Highland Ave	\$ 170	\$ 1,400
Lot M (#132803) [Schindler]	1220 Morningside Dr.	\$ 170	\$ 1,400
Civic Ctr. Plaza (#143842) [Mitsubishi Electric]	1400 Highland Ave	\$ 170	\$ 1,400
Public Safety Facility (#143841) [Mitsubishi Electric]	400/420 15 th St	\$ 170	\$
Escalators [Schindler]			
Lot M (#143529)	1220 Morningside Dr	500	—
Lot M (#143530)	"	500	—
Lot M (#143566)	"	500	—
Lot M (#143567)	"	500	—
Wheelchair lifts*			
Joslyn Center (#163072) [Porch]	1601 Valley Dr	70	—
Marine Complex (#121864) [Accessibility Equipment Manufacturers Assoc]	1801 Marine Ave	70	—
City Hall (#144972) [Porch]	1400 Highland Ave	70	—
Pier at Round House (#N/A)**	100 Manhattan Beach Blvd	70	—

*weekly service in-house, all other intervals done by contractor

**Pier Round House maintenance not included until installation is complete, projected for late 2018

Termination for Default

The City may, by written notice of default to the vendor, terminate any resulting order in whole or in part should the vendor fail to make satisfactory progress or fail to remedy discrepancies within the time set forth in any Cure Letter sent to the Contractor by the Purchasing Manager. If, after notice of termination of this contract under the provisions of this clause, it is determined for any reason that the Contractor was not in default under the provisions of this clause, the rights and obligations of the parties shall be the same as if the notice of termination had been issued pursuant to the Termination for Convenience clause. The rights and remedies of City provided under this article shall not be exclusive and are in addition to any other rights and remedies provided by law or under resulting order.

Pre-Job Conference

The successful contractor will meet with the Contract Administrator prior to commencement of the work for the purpose of reviewing the conditions, instructions, procedures and specifications. A starting date will be arranged at that time.

Rights

The City of Manhattan Beach reserves the following rights:

- To modify this RFP at any time.
- To determine the professional and financial competence and responsibility of proposers.
- To select a limited number of proposers to be interviewed.
- To accept the most qualified proposal.
- To ask a proposer to provide alternative pricing for various components than those originally proposed.
- To reject any or all proposals.

Proposal Requirements

Proposals shall specify each item as set forth in this Request for Proposal (RFP). Failure to comply with all requirements and conditions set forth by these specifications and RFP instructions will be the cause for the rejection of the proposal(s). No exceptions or deviations from these specifications will be considered unless each exception or deviation is specifically identified with a detailed City document fully defining the exception(s). All exception(s) must be fully supported by detailed specification regarding the deviated item and shall accompany the proposal for evaluation by the City. If no exceptions are identified, the Proposer shall be required to furnish the service exactly as specified herein. The burden of proof of compliance with these specifications is the responsibility of the Proposer. Acceptance or rejection of the changes is the sole prerogative of the City. The City reserves the right to reject any and all proposals or to make no award.

Bidder Must Make Thorough Investigation

It is the bidder's responsibility to examine samples of the proposed work to fully acquaint themselves with the specifications and the nature of the work to be accomplished. Proposers shall have no claim against the City based upon ignorance of the nature and requirements of the project,

misapprehension of the site conditions, or misunderstanding of the specifications or contract provisions.

Acceptance of Conditions

By submitting a bid proposal, each bidder expressly agrees to and accepts the following conditions.

- a. All parts of the Instructions to Bidders and Specifications will become part of the contract between the selected bidder and the City.
- b. The City may require whatever evidence is deemed necessary relative to the bidder's financial stability and ability to perform this project.
- c. The City reserves the right to request further information from the bidder, either in writing or orally, to establish qualifications.
- d. The City reserves the right to solely judge the bidder's representations, and to solely determine whether the bidder is qualified to undertake the project pursuant to the criteria set forth herein. The bidder, by submitting a bid or proposal, expressly acknowledges and agrees that the judgment of the City as to whether or not the bidder is qualified to perform the project shall be final, binding, and conclusive.

General Conditions

The City will not reimburse respondents to this RFP for any costs incurred in the preparation and submittal of the proposals. Further, the request does not obligate the City of Manhattan Beach to accept or contract for any expressed or implied services. The City reserves the right to:

- Request any firm/person submitting a proposal to clarify its proposals during the selection phase;
- Negotiate the project schedule and reasonable costs with the selected vendor;
- Modify or alter any requirements herein, and;
- Identify additional tasks to be accomplished prior to establishing a formal contractual agreement.

Government Regulations

The bidder shall comply with all federal, City, and local regulations/laws pertaining to the identified services.

Prevailing Wages

In accordance with Labor Code Section 1770 *et seq.*, this Project is a "public work," and thus, the Contractor and any Subcontractors must pay wages in accordance with the determination of the Director of the Department of Industrial Relations ("DIR") regarding the prevailing rate of per diem wages. In addition, contractor is required to register with the DIR and may be required to provide the City with certified payroll reporting.

Licenses

Contractor shall be responsible for all licenses and permits required to perform this work in accordance with Federal, City and local requirements and shall pay all fees resulting there from.

Payment and Invoicing

Contractor shall submit a monthly invoice in duplicate to the City of Manhattan Beach, 1400 Highland Ave., Manhattan Beach, CA 90266. Invoice shall be submitted on standard company forms and shall City (1) invoice number, (2) invoice date, (3) invoice period, (4) a brief description of work including location, (5) the purchase order number, (6) total amount requested, and (7) contractors tax ID number. Payment will be made after approval of the invoices by Contract Administrator, subject to the routine processing requirements of the City.

Insurance

Reference attached Professional Services Agreement for limits.

Contract

No agreement shall be binding upon the City until a Contract is completely executed by the Contractor, City Council, and approved by the City Attorney. Failure to execute and return the contract agreement and acceptable insurance documentations in a timely manner may be just cause for the City to rescind the contact offer.

Conflict of Interest

It shall be the duty of the Contractor to comply with all applicable and City and federal laws relating to the prohibited conflicts of interest. As part of its response to the RFP, the Contractor shall disclose in writing any financial, business, employment or other relationships with the City or with any of its officers, employees, or agents that are or were in existence during the twelve (12) calendar months immediately preceding and including, the date the Contractor's response to the RFP is filed. In addition, the Contractor shall disclose in writing, any financial, business, employment or other relationships with any contractor or engineer who may have a financial interest in securing design and/or construction contacts for the project. The Contractor shall have a continuing obligation to keep the foregoing disclosures current and up-to-date during the term of the contract, and the Contractor's failure to timely disclose the existence of such a relationship shall be grounds for immediate termination of the contract.

SAMPLE PROFESSIONAL SERVICES AGREEMENT

This Professional Services Agreement ("Agreement") is dated [month] [day], [year] ("Effective Date") and is between the City of Manhattan Beach, a California municipal corporation ("City") and [Contractor's Legal Name], a [Legal Form of Entity and state of formation, e.g., California corporation, limited partnership, limited liability company] ("Contractor"). City and Contractor are sometimes referred to herein as the "Parties", and individually as a "Party".

RECITALS

A. City issued Request for Proposals No. _____ on _____, seeking proposals for the provision of [briefly describe required services].

B. Contractor submitted a proposal dated _____ in response to the RFP.

The Parties therefore agree as follows:

1. Contractor's Services.

A. Scope of Services. Contractor shall perform the services described in the Scope of Services (the "Services"), attached as **Exhibit A**. City may request, in writing, changes in the Scope of Services to be performed. Any changes mutually agreed upon by the Parties, and any increase or decrease in compensation, shall be incorporated by written amendments to this Agreement.

B. Party Representatives. For the purposes of this Agreement, the City Representative shall be the City Manager, or such other person designated in writing by the City Manager (the "City Representative"). For the purposes of this Agreement, the Contractor Representative shall be [Name], [Title] (the "Contractor Representative"). The Contractor Representative shall directly manage Contractor's Services under this Agreement. Contractor shall not change the Contractor Representative without City's prior written consent.

C. Time for Performance. Contractor shall commence the Services on the Effective Date and shall perform all Services in conformance with the project timeline, set forth in **Exhibit A**.

D. Standard of Performance. Contractor shall perform all Services under this Agreement in accordance with the standard of care generally exercised by like professionals under similar circumstances and in a manner reasonably satisfactory to City.

E. Personnel. Contractor has, or will secure at its own expense, all personnel required to perform the Services required under this Agreement. All of the Services required under this Agreement shall be performed by Contractor or under its

supervision, and all personnel engaged in the work shall be qualified to perform such Services.

F. Compliance with Laws. Contractor shall comply with all applicable federal, state and local laws, ordinances, codes, regulations and requirements.

G. Permits and Licenses. Contractor shall obtain and maintain during the Agreement term all necessary licenses, permits and certificates required by law for the provision of Services under this Agreement, including a business license.

2. Term of Agreement. The term of this Agreement shall be from the Effective Date through [Month] [Day], [Year], unless sooner terminated as provided in Section 12 of this Agreement or extended.

A. Compensation. As full compensation for Contractor's Services provided under this Agreement, City shall pay Contractor the total sum of \$Numerical Amount (the "Maximum Compensation"), as set forth in the Approved Fee Schedule attached hereto as **Exhibit B**.

The City Manager shall have authority to increase the Maximum Compensation by up to 20%; any further increase requires City Council approval.

B. Expenses. The amount set forth in paragraph 3.A. above shall include reimbursement for all actual and necessary expenditures reasonably incurred in the performance of this Agreement.

A. Additional Services. City shall not allow any claims for additional Services performed by Contractor, unless the City Council or City Representative, if applicable, and the Contractor Representative authorize the additional Services in writing prior to Contractor's performance of the additional Services or incurrence of additional expenses. Any additional Services or expenses authorized by the City Council or City Representative shall be compensated at the rates set forth in **Exhibit B**, or, if not specified, at a rate mutually agreed to by the Parties. City shall make payment for additional Services and expenses in accordance with Section 4 of this Agreement.

3. Method of Payment.

A. Invoices. Contractor shall submit to City an invoice, on a monthly basis for the Services performed pursuant to this Agreement. Each invoice shall itemize the Services rendered during the billing period, hourly rates charged, if applicable, and the amount due. City shall review each invoice and notify Contractor in writing within ten business days of receipt of any disputed invoice amounts.

B. Payment. City shall pay all undisputed invoice amounts within 30 calendar days after receipt up to the maximum compensation set forth in Section 3 of this Agreement. City does not pay interest on past due amounts. City shall not withhold federal payroll, state payroll or other taxes, or other similar deductions, from payments made to Contractor.

C. Audit of Records. Contractor shall make all records, invoices, time cards, cost control sheets and other records maintained by Contractor in connection with this Agreement available during Contractor's regular working hours to City for review and audit by City.

4. **Independent Contractor.** Contractor is, and shall at all times remain as to City, a wholly independent contractor. Contractor shall have no power to incur any debt, obligation, or liability on behalf of City. Neither City nor any of its agents shall have control over the conduct of Contractor or any of Contractor's employees, except as set forth in this Agreement. Contractor shall not, at any time, or in any manner, represent that it or any of its officers, agents or employees are in any manner employees of City.

5. **Information and Documents.**

A. Contractor covenants that all data, reports, documents, discussion, or other information (collectively "Data") developed or received by Contractor or provided for performance of this Agreement are deemed confidential and shall not be disclosed or released by Contractor without prior written authorization by City. City shall grant such authorization if applicable law requires disclosure. Contractor, its officers, employees, agents, or subcontractors shall not without written authorization from the City Manager or unless requested in writing by the City Attorney, voluntarily provide declarations, letters of support, testimony at depositions, response to interrogatories or other information concerning the work performed under this Agreement or relating to any project or property located within the City. Response to a subpoena or court order shall not be considered "voluntary," provided Contractor gives City notice of such court order or subpoena.

B. Contractor shall promptly notify City should Contractor, its officers, employees, agents or subcontractors be served with any summons, complaint, subpoena, notice of deposition, request for documents, interrogatories, request for admissions or other discovery request, court order or subpoena from any party regarding this Agreement and the work performed thereunder or with respect to any project or property located within the City. City may, but has no obligation to, represent Contractor or be present at any deposition, hearing or similar proceeding. Contractor agrees to cooperate fully with City and to provide City with the opportunity to review any response to discovery requests provided by Contractor. However, City's right to review any such response does not imply or mean the right by City to control, direct or rewrite the response.

C. All Data required to be furnished to City in connection with this Agreement shall become City's property, and City may use all or any portion of the Data submitted by Contractor as City deems appropriate. Upon completion of, or in the event of termination or suspension of this Agreement, all original documents, designs, drawings, maps, models, computer files containing data generated for the Services, surveys, notes, and other documents prepared in the course of providing the Services shall become City's sole property and may be used, reused or otherwise disposed of by City without Contractor's permission. Contractor may take and retain copies of the written

products as desired, but the written products shall not be the subject of a copyright application by Contractor.

D. Contractor's covenants under this Section 6 shall survive the expiration or termination of this Agreement.

6. Conflicts of Interest. Contractor and its officers, employees, associates and subcontractors, if any, shall comply with all conflict of interest statutes of the State of California applicable to Contractor's Services under this Agreement, including the Political Reform Act (Gov. Code § 81000, *et seq.*) and Government Code Section 1090. During the term of this Agreement, Contractor may perform similar Services for other clients, but Contractor and its officers, employees, associates and subcontractors shall not, without the City Representative's prior written approval, perform work for another person or entity for whom Contractor is not currently performing work that would require Contractor or one of its officers, employees, associates or subcontractors to abstain from a decision under this Agreement pursuant to a conflict of interest statute. Contractor shall incorporate a clause substantially similar to this Section 7 into any subcontract that Contractor executes in connection with the performance of this Agreement.

7. Indemnification.

A. Indemnities for Third Party Claims.

1) To the fullest extent permitted by law, Contractor shall, at its sole cost and expense, defend, hold harmless and indemnify City and its elected officials, officers, attorneys, agents, employees, designated volunteers, successors, assigns and those City agents serving as independent contractors in the role of City officials (collectively "Indemnitees"), from and against any and all damages, costs, expenses, liabilities, claims, demands, causes of action, proceedings, expenses, judgments, penalties, liens, and losses of any nature whatsoever, including fees of accountants, attorneys, or other professionals and all costs associated therewith and the payment of all consequential damages (collectively "Liabilities"), in law or equity, whether actual, alleged or threatened, which arise out of, are claimed to arise out of, pertain to, or relate to the acts or omissions of Contractor, its officers, agents, servants, employees, subcontractors, materialmen, contractors or their officers, agents, servants or employees (or any entity or individual that Contractor shall bear the legal liability thereof) in the performance of this Agreement, including the Indemnitees' active or passive negligence, except for Liabilities arising from the sole negligence or willful misconduct of the Indemnitees, as determined by final arbitration or court decision or by the agreement of the Parties. Contractor shall defend the Indemnitees in any action or actions filed in connection with any Liabilities with counsel of the Indemnitees' choice, and shall pay all costs and expenses, including all attorneys' fees and experts' costs actually incurred in connection with such defense. Contractor shall reimburse the Indemnitees for any and all legal expenses and costs incurred by Indemnitees in connection therewith.

2) Contractor shall pay all required taxes on amounts paid to Contractor under this Agreement, and indemnify and hold City harmless from any and all taxes, assessments, penalties, and interest asserted against City by reason of the independent contractor relationship created by this Agreement. Contractor shall fully comply with the workers' compensation law regarding Contractor and Contractor's employees. Contractor shall indemnify and hold City harmless from any failure of Contractor to comply with applicable workers' compensation laws. City may offset against the amount of any fees due to Contractor under this Agreement any amount due to City from Contractor as a result of Contractor's failure to promptly pay to City any reimbursement or indemnification arising under this subparagraph A.2).

3) Contractor shall obtain executed indemnity agreements with provisions identical to those in this Section 8 from each and every subcontractor or any other person or entity involved by, for, with or on behalf of Contractor in the performance of this Agreement. If Contractor fails to obtain such indemnity obligations, Contractor shall be fully responsible and indemnify, hold harmless and defend the Indemnitees from and against any and all Liabilities at law or in equity, whether actual, alleged or threatened, which arise out of, are claimed to arise out of, pertain to, or relate to the acts or omissions of Contractor's subcontractor, its officers, agents, servants, employees, subcontractors, materialmen, contractors or their officers, agents, servants or employees (or any entity or individual that Contractor's subcontractor shall bear the legal liability thereof) in the performance of this Agreement, including the Indemnitees' active or passive negligence, except for Liabilities arising from the sole negligence or willful misconduct of the Indemnitees, as determined by final arbitration or court decision or by the agreement of the Parties.

B. Workers' Compensation Acts not Limiting. Contractor's indemnifications and obligations under this Section 8, or any other provision of this Agreement, shall not be limited by the provisions of any workers' compensation act or similar act. Contractor expressly waives its statutory immunity under such statutes or laws as to City, its officers, agents, employees and volunteers.

C. Insurance Requirements not Limiting. City does not, and shall not, waive any rights that it may possess against Contractor because of the acceptance by City, or the deposit with City, of any insurance policy or certificate required pursuant to this Agreement. The indemnities in this Section 8 shall apply regardless of whether or not any insurance policies are determined to be applicable to the Liabilities, tax, assessment, penalty or interest asserted against City.

D. Survival of Terms. Contractor's indemnifications and obligations under this Section 8 shall survive the expiration or termination of this Agreement.

8. Insurance.

A. Minimum Scope and Limits of Insurance. Contractor shall procure and at all times during the term of this Agreement carry, maintain, and keep in full force and effect, insurance as follows:

1) Commercial General Liability Insurance with a minimum limit of \$2,000,000.00 per occurrence for bodily injury, personal injury and property damage and a general aggregate limit of \$2,000,000.00 per project or location. If Contractor is a limited liability company, the commercial general liability coverage shall be amended so that Contractor and its managers, affiliates, employees, agents and other persons necessary or incidental to its operation are insureds.

2) Automobile Liability Insurance for any owned, non-owned or hired vehicle used in connection with the performance of this Agreement with a combined single limit of \$2,000,000.00 per accident for bodily injury and property damage. If Contractor does not use any owned, non-owned or hired vehicles in the performance of Services under this Agreement, Contractor shall obtain a non-owned auto endorsement to the Commercial General Liability policy required under subparagraph A.1) of this Section 9.

3) Workers' Compensation Insurance as required by the State of California and Employer's Liability Insurance with a minimum limit of \$1,000,000.00 per accident for bodily injury or disease. If Contractor has no employees while performing Services under this Agreement, workers' compensation policy is not required, but Contractor shall execute a declaration that it has no employees.

B. Acceptability of Insurers. The insurance policies required under this Section 9 shall be issued by an insurer admitted to write insurance in the State of California with a rating of A:VII or better in the latest edition of the A.M. Best Insurance Rating Guide. Self insurance shall not be considered to comply with the insurance requirements under this Section 9.

C. Additional Insured. The commercial general and automobile liability policies shall contain an endorsement naming City, its officers, employees, agents and volunteers as additional insureds.

D. Primary and Non-Contributing. The insurance policies required under this Section 9 shall apply on a primary non-contributing basis in relation to any other insurance or self-insurance available to City. Any insurance or self-insurance maintained by City, its officers, employees, agents or volunteers, shall be in excess of Contractor's insurance and shall not contribute with it.

E. Contractor's Waiver of Subrogation. The insurance policies required under this Section 9 shall not prohibit Contractor and Contractor's employees, agents or subcontractors from waiving the right of subrogation prior to a loss. Contractor hereby waives all rights of subrogation against City.

F. Deductibles and Self-Insured Retentions. Any deductibles or self-insured retentions must be declared to and approved by City. At City's option, Contractor shall either reduce or eliminate the deductibles or self-insured retentions with respect to City, or Contractor shall procure a bond guaranteeing payment of losses and expenses.

G. Cancellations or Modifications to Coverage. Contractor shall not cancel, reduce or otherwise modify the insurance policies required by this Section 9 during the term of this Agreement. The commercial general and automobile liability policies required under this Agreement shall be endorsed to state that should the issuing insurer cancel the policy before the expiration date, the issuing insurer will endeavor to mail 30 days' prior written notice to City. If any insurance policy required under this Section 9 is canceled or reduced in coverage or limits, Contractor shall, within two business days of notice from the insurer, phone, fax or notify City via certified mail, return receipt requested, of the cancellation of or changes to the policy.

H. City Remedy for Noncompliance. If Contractor does not maintain the policies of insurance required under this Section 9 in full force and effect during the term of this Agreement, or in the event any of Contractor's policies do not comply with the requirements under this Section 9, City may either immediately terminate this Agreement or, if insurance is available at a reasonable cost, City may, but has no duty to, take out the necessary insurance and pay, at Contractor's expense, the premium thereon. Contractor shall promptly reimburse City for any premium paid by City or City may withhold amounts sufficient to pay the premiums from payments due to Contractor.

I. Evidence of Insurance. Prior to the performance of Services under this Agreement, Contractor shall furnish City's Risk Manager with a certificate or certificates of insurance and all original endorsements evidencing and effecting the coverages required under this Section 9. The endorsements are subject to City's approval. Contractor may provide complete, certified copies of all required insurance policies to City. Contractor shall maintain current endorsements on file with City's Risk Manager. Contractor shall provide proof to City's Risk Manager that insurance policies expiring during the term of this Agreement have been renewed or replaced with other policies providing at least the same coverage. Contractor shall furnish such proof at least two weeks prior to the expiration of the coverages.

J. Indemnity Requirements not Limiting. Procurement of insurance by Contractor shall not be construed as a limitation of Contractor's liability or as full performance of Contractor's duty to indemnify City under Section 8 of this Agreement.

K. Subcontractor Insurance Requirements. Contractor shall require each of its subcontractors that perform Services under this Agreement to maintain insurance coverage that meets all of the requirements of this Section 9.

9. Mutual Cooperation.

A. City's Cooperation. City shall provide Contractor with all pertinent Data, documents and other requested information as is reasonably available for Contractor's proper performance of the Services required under this Agreement.

B. Contractor's Cooperation. In the event any claim or action is brought against City relating to Contractor's performance of Services rendered under this Agreement, Contractor shall render any reasonable assistance that City requires.

10. Records and Inspections. Contractor shall maintain complete and accurate records with respect to time, costs, expenses, receipts, correspondence, and other such information required by City that relate to the performance of the Services. All such records shall be maintained in accordance with generally accepted accounting principles and shall be clearly identified and readily accessible. Contractor shall provide free access to City, its designees and representatives at reasonable times, and shall allow City to examine and audit the books and records, to make transcripts therefrom as necessary, and to inspect all work, data, documents, proceedings and activities related to this Agreement. Such records, together with supporting documents, shall be maintained for a period of three years after receipt of final payment.

11. Termination of Agreement.

A. Right to Terminate. City may terminate this Agreement at any time, at will, for any reason or no reason, after giving written notice to Contractor at least five calendar days before the termination is to be effective. Contractor may terminate this Agreement at any time, at will, for any reason or no reason, after giving written notice to City at least 60 calendar days before the termination is to be effective.

B. Obligations upon Termination. Contractor shall cease all work under this Agreement on or before the effective date of termination specified in the notice of termination. In the event of City's termination of this Agreement due to no fault or failure of performance by Contractor, City shall pay Contractor based on the percentage of work satisfactorily performed up to the effective date of termination. In no event shall Contractor be entitled to receive more than the amount that would be paid to Contractor for the full performance of the Services required by this Agreement. Contractor shall have no other claim against City by reason of such termination, including any claim for compensation.

12. Force Majeure. Contractor shall not be liable for any failure to perform its obligations under this Agreement if Contractor presents acceptable evidence, in City's sole judgment, that such failure was due to strikes, lockouts, labor disputes, embargoes, acts of God, inability to obtain labor or materials or reasonable substitutes for labor or materials, governmental restrictions, governmental regulations, governmental controls, judicial orders, enemy or hostile governmental action, civil commotion, fire or other casualty, or other causes beyond Contractor's reasonable control and not due to any act by Contractor.

13. Default.

A. Contractor's failure to comply with the provisions of this Agreement shall constitute a default. In the event that Contractor is in default for cause under the terms of this Agreement, City shall have no obligation or duty to continue compensating Contractor for any work performed after the date of default.

B. If the City Manager or his delegate determines that Contractor is in default in the performance of any of the terms or conditions of this Agreement, City shall serve

Contractor with written notice of the default. Contractor shall have ten calendar days after service upon it of the notice in which to cure the default by rendering a satisfactory performance. In the event that Contractor fails to cure its default within such period of time, City may, notwithstanding any other provision of this Agreement, terminate this Agreement without further notice and without prejudice to any other remedy to which it may be entitled at law, in equity or under this Agreement.

14. Notices. Any notice, consent, request, demand, bill, invoice, report or other communication required or permitted under this Agreement shall be in writing and conclusively deemed effective: (a) on personal delivery, (b) on confirmed delivery by courier service during Contractor's and City's regular business hours, or (c) three business days after deposit in the United States mail, by first class mail, postage prepaid, and addressed to the Party to be notified as set forth below:

If to City:
Attn: _____
City of Manhattan Beach
1400 Highland Avenue
Manhattan Beach, California 90266
Telephone: _____
Email: _____

If to Contractor:
Attn: Denis Davis
Schindler Elevator Corporation
16450 Foothill Blvd., Suite 200
Sylmar, CA 91342

With a courtesy copy to:

Quinn M. Barrow, City Attorney
1400 Highland Avenue
Manhattan Beach, CA 90266
Telephone: (310) 802-5061
Email: qbarrow@citymb.info

15. Non-Discrimination and Equal Employment Opportunity. In the performance of this Agreement, Contractor shall not discriminate against any employee, subcontractor or applicant for employment because of race, color, religious creed, sex, gender, gender identity, gender expression, marital status, national origin, ancestry, age, physical disability, mental disability, medical condition, genetic information, sexual orientation or other basis prohibited by law. Contractor will take affirmative action to ensure that subcontractors and applicants are employed, and that employees are treated during employment, without regard to their race, color, religious creed, sex, gender, gender identity, gender expression, marital status, national origin, ancestry, age, physical disability, mental disability, medical condition, genetic information or sexual orientation.

16. Prohibition of Assignment and Delegation. Contractor shall not assign any of its rights or delegate any of its duties under this Agreement, either in whole or in part, without City's prior written consent. City's consent to an assignment of rights under this Agreement shall not release Contractor from any of its obligations or alter any of its primary obligations to be performed under this Agreement. Any attempted assignment

or delegation in violation of this Section 17 shall be void and of no effect and shall entitle City to terminate this Agreement. As used in this Section 17, "assignment" and "delegation" means any sale, gift, pledge, hypothecation, encumbrance or other transfer of all or any portion of the rights, obligations, or liabilities in or arising from this Agreement to any person or entity, whether by operation of law or otherwise, and regardless of the legal form of the transaction in which the attempted transfer occurs.

17. No Third Party Beneficiaries Intended. This Agreement is made solely for the benefit of the Parties to this Agreement and their respective successors and assigns, and no other person or entity may have or acquire a right by virtue of this Agreement.

18. Waiver. No delay or omission to exercise any right, power or remedy accruing to City under this Agreement shall impair any right, power or remedy of City, nor shall it be construed as a waiver of, or consent to, any breach or default. No waiver of any breach, any failure of a condition, or any right or remedy under this Agreement shall be (1) effective unless it is in writing and signed by the Party making the waiver, (2) deemed to be a waiver of, or consent to, any other breach, failure of a condition, or right or remedy, or (3) deemed to constitute a continuing waiver unless the writing expressly so states.

19. Final Payment Acceptance Constitutes Release. The acceptance by Contractor of the final payment made under this Agreement shall operate as and be a release of City from all claims and liabilities for compensation to Contractor for anything done, furnished or relating to Contractor's work or services. Acceptance of payment shall be any negotiation of City's check or the failure to make a written extra compensation claim within ten calendar days of the receipt of that check. However, approval or payment by City shall not constitute, nor be deemed, a release of the responsibility and liability of Contractor, its employees, sub-contractors and agents for the accuracy and competency of the information provided and/or work performed; nor shall such approval or payment be deemed to be an assumption of such responsibility or liability by City for any defect or error in the work prepared by Contractor, its employees, sub-contractors and agents.

20. Corrections. In addition to the above indemnification obligations, Contractor shall correct, at its expense, all errors in the work which may be disclosed during City's review of Contractor's report or plans. Should Contractor fail to make such correction in a reasonably timely manner, such correction may be made by City, and the cost thereof shall be charged to Contractor. In addition to all other available remedies, City may deduct the cost of such correction from any retention amount held by City or may withhold payment otherwise owed Contractor under this Agreement up to the amount of the cost of correction.

21. Non-Appropriation of Funds. Payments to be made to Contractor by City for services performed within the current fiscal year are within the current fiscal budget and within an available, unexhausted fund. In the event that City does not appropriate sufficient funds for payment of Contractor's services beyond the current fiscal year, the Agreement shall cover payment for Contractor's services only to the conclusion of the

last fiscal year in which City appropriates sufficient funds and shall automatically terminate at the conclusion of such fiscal year.

22. Exhibits. Exhibits A and B constitute a part of this Agreement and are incorporated into this Agreement by this reference. If any inconsistency exists or arises between a provision of this Agreement and a provision of any exhibit, or between a provision of this Agreement and a provision of Contractor's proposal, the provisions of this Agreement shall control.

23. Entire Agreement and Modification of Agreement. This Agreement and all exhibits referred to in this Agreement constitute the final, complete and exclusive statement of the terms of the agreement between the Parties pertaining to the subject matter of this Agreement and supersede all other prior or contemporaneous oral or written understandings and agreements of the Parties. No Party has been induced to enter into this Agreement by, nor is any Party relying on, any representation or warranty except those expressly set forth in this Agreement. This Agreement may not be amended, nor any provision or breach hereof waived, except in a writing signed by both Parties.

24. Headings. The headings in this Agreement are included solely for convenience of reference and shall not affect the interpretation of any provision of this Agreement or any of the rights or obligations of the Parties to this Agreement.

25. Word Usage. Unless the context clearly requires otherwise, (a) the words "shall," "will" and "agrees" are mandatory and "may" is permissive; (b) "or" is not exclusive; and (c) "includes" or "including" are not limiting.

26. Time of the Essence. Time is of the essence in respect to all provisions of this Agreement that specify a time for performance; provided, however, that the foregoing shall not be construed to limit or deprive a Party of the benefits of any grace or use period allowed in this Agreement.

27. Business Days. "Business days" means days Manhattan Beach City Hall is open for business.

28. Governing Law and Choice of Forum. This Agreement, and any dispute arising from the relationship between the Parties to this Agreement, shall be governed by and construed in accordance with the laws of the State of California, except that any rule of construction to the effect that ambiguities are to be resolved against the drafting party shall not be applied in interpreting this Agreement. Any dispute that arises under or relates to this Agreement (whether contract, tort or both) shall be resolved in a superior or federal court with geographic jurisdiction over the City of Manhattan Beach.

29. Attorneys' Fees. In any litigation or other proceeding by which a Party seeks to enforce its rights under this Agreement (whether in contract, tort or both) or seeks a declaration of any rights or obligations under this Agreement, the prevailing Party shall be entitled to recover actual attorneys' fees, experts' fees, and other costs, in addition to all other relief to which that Party may be entitled.

30. Severability. If a court of competent jurisdiction holds any provision of this Agreement to be illegal, invalid or unenforceable for any reason, the validity of and enforceability of the remaining provisions of this Agreement shall not be affected and continue in full force and effect.

31. Counterparts. This Agreement may be executed in multiple counterparts, all of which shall be deemed an original, and all of which will constitute one and the same instrument.

32. Corporate Authority. The persons executing this Agreement on behalf of the Parties warrant that they are duly authorized to execute this Agreement on behalf of the Parties and that by their execution, the Parties are formally bound to the provision of this Agreement.

[SIGNATURE PAGE FOLLOWS]

The Parties, through their duly authorized representatives are signing this Agreement on the date stated in the introductory clause.

City:

City of Manhattan Beach,
a California municipal corporation

By: _____
Name: _____
Title: _____

ATTEST:

By: _____
Name: Liza Tamura
Title: City Clerk

APPROVED AS TO FORM:

By: _____
Name: Quinn M. Barrow
Title: City Attorney

APPROVED AS TO CONTENT:

By: _____
Name: Bruce Moe
Title: Finance Director

Contractor:

[Contractor's Legal Name], Schindler Elevator Corp
a [Legal Form of Entity]

By: _____
Name: _____
Title: _____

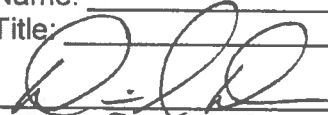
By:  _____
Name: Denis Davis
Title: General Manager

EXHIBIT A
SCOPE OF SERVICES

EXHIBIT B
APPROVED FEE SCHEDULE

Schindler Custom

SCHINDLER ELEVATOR CORPORATION

16450 Foothill Blvd.

Suite 200

Sylmar, CA 91342-1036

Phone: 818-336-3009

Fax: 818-336-3076

Date: February 10, 2017

Estimate Number: RHAS-AJFUC5 (2016.7.1)

To:

City Of Manhattan Beach

1400 Highland Ave

Manhattan Beach, CA 90266

Campus Name:

City Of Manhattan Beach

Attn: Gwen Eng

EQUIPMENT DESCRIPTION

Qty	Manufacturer	Equipment	Application	Description	Rise/Length Openings	Capacity	Speed	Install#
				1400 Highland Ave				
				1400 Highland Ave Manhattan Beach, CA 90266				
4	Montgomery	Hydraulic Passenger	Elevator 1		2F/0R	2000	125	
4	Atlantic	WhchrLft	Unknown					
4	Schindler	Escalator	Escalators		>10&≤20		90	

SCHINDLER ELEVATOR CORPORATION ("Schindler", "we", "us") 16450 Foothill Blvd.

Suite 200, Sylmar, CA 91342-1036, and **CITY OF MANHATTAN BEACH**, 1400 Highland Ave, Manhattan Beach, CA 90266 ("you") agree as follows:

PREVENTIVE MAINTENANCE SERVICE

- Our preventive maintenance program performed in accordance with a maintenance schedule specific to your equipment and its usage
- Examine, lubricate, adjust, and repair/replace covered components
- Criteria for replacement of all wire ropes will be the appropriate factor of safety
- Prompt callback coverage
- Safety testing
- Customer friendly and responsive communications

PREVENTIVE MAINTENANCE PROGRAM

Our Preventive Maintenance Program, as described in this agreement will be performed in accordance with a maintenance schedule specific to your equipment. A Schindler technician will be assigned to you, and back up technicians are available as required to give you prompt service as required at all times. A Schindler account representative will be assigned to you, and will be your primary contact for communications regarding your agreement. Also available to you is our extensive technical support and parts inventory, at the site as needed, and local warehouses and our national Service Distribution Center available for express delivery in emergencies.

EXAMINE, LUBRICATE, ADJUST, AND REPAIR/REPLACE COVERED COMPONENTS

We will on a periodic basis examine, lubricate, adjust, and as needed or if usage mandates, repair, or replace the Covered Components listed below.

HYDRAULIC ELEVATORS

Basic components: Controller components: resistors, timers, fuses, overloads, minor contacts, wiring, coils; packing, drive belts, strainers, functional components of car and corridor operating stations, hangers and tracks, door operating devices, door gibbs, guide shoes, rollers, traveling cables, signal lamps (replacement during regular visits only), interlocks, door closers, buffers, switches, door protection devices, and alarm bells.

Major components: Exposed piping in the Machine Room & hoistway, motor, PC boards, pump unit, solid state devices, contactors, and valve rebuilds.

ESCALATORS

Basic components: Step rollers, belts, controller components: resistors, timers, fuses, overloads, minor contacts, wiring, coils; brake: pads, lining, disks or shoes.

Major components: Brake, escalator machine or drive units, handrail, handrail drive chains, main drive chains or belts, PC boards, solid state devices, contactors, sprockets, step chains.

WHEELCHAIR LIFT

Notwithstanding the services provided for other units covered by this Agreement, we will periodically inspect, make minor adjustments, lubricate, and make recommendations for repair or replacement of components of your unit(s). No services for your units, other than as specifically set forth above, are included or intended by this Agreement.

We assume no responsibility for the following items: hoistway door hinges, panels, frames, gates and sills; cabs and cab flooring; freight elevator door straps, cab doors, gates and removable cab panels; cab mirrors and handrails; power switches, fuses and feeders to controllers; emergency cab lighting; light fixtures and lamps; cover plates for signal fixtures and operating stations; card readers or other access control devices; smoke/fire alarms and detectors; pit pumps and alarms; cleaning of cab interiors and exposed sills; plungers, pistons, casings and cylinders; automatic ejection systems; all piping and connections except that portion which is exposed in the machine room and hoistway; guide rails; tank; emergency power generators; telephone service, communication devices; disposal of used oil; intercom or music systems; ventilators, air conditioners or heaters; adverse elevator operation as a result of machine room temperatures (including temperature variations below 60 degrees Fahrenheit and above 90 degrees Fahrenheit); media displays; computer consoles or keyboards; fireman's phones; exterior panels, skirt and deck panels, balustrades, relamping of illuminated balustrades; attachments to skirts, decking or balustrades; moving walk belts; pallets; steps; skirt brushes; sideplate devices; any batteries associated with the equipment; obsolete items, (defined as parts, components or equipment either 20 or more years from original installation, or no longer available from the original equipment manufacturer or an industry parts supplier, replaceable only by refabrication.) In the event that safety testing is performed by us at the start of the Agreement, and we find that critical safety components, such as the governor and/or safeties for traction equipment, and/or valves on hydraulic equipment, are not operating correctly, therefore resulting in unsafe conditions, you will be responsible to authorize the necessary repairs/replacements of this equipment, at your expense.

CLEANING

We will periodically clean the machine room, car top, and pit of debris related to our work in these areas.

TESTING OF SAFETY DEVICES

<u>Equipment</u>	<u>Test</u>	<u>Frequency</u>
Hydraulic	Pressure/Relief Valve	Annually
Hydraulic	CA Full Load	Every 5 years
Escalator	Safety Switch Test	Annually

Our testing responsibilities do not include fees or charges imposed by local authorities in conjunction with witnessing, witnessing costs, inspecting, assisting inspection authorities, licensing or testing the Equipment including observation of testing by 3rd parties; changes in the testing requirements after the initial start date of this Agreement, or any other testing obligations other than as specifically set forth above, including, but not limited to seismic tests. Since these tests may expose the equipment to strains well in excess of those experienced during normal operation, Schindler will not be responsible for any damage to the equipment or property, or injury to or death of any persons, resulting from or arising out of the performance of these tests. Further, our testing responsibilities do not include performance, or the keeping of records related to, monthly firefighters service.

CUSTOMER FRIENDLY AND RESPONSIVE COMMUNICATIONS

Service dispatching will take place through our Schindler Customer Service Network (SCSN), which is staffed by qualified Schindler personnel, 24 /7. You will be provided with a customer identification number, which must be referenced when a call is placed for your facility. Our dispatchers will have access to your building's service call records, and will promptly relay the details of your call to the assigned technician.

SCHINDLER DIGITAL

You will be provided access to Schindler's digital tools, which include Schindler Direct, Schindler Dashboard, and Schindler Dashboard Mobile. These digital tools and their three subscription tiers are described below.

Schindler Direct provides remote connectivity to your Equipment. Schindler Direct will automatically notify us if any connected component or function is operating outside established parameters. When appropriate, we will communicate with you to schedule appropriate service calls. Monitoring will be performed 24/7 and will automatically communicate with our Customer Service Network using dedicated wireless cellular technology. Schindler will make every reasonable effort to maintain wireless connectivity. If cellular service is not available or becomes unavailable you have the responsibility to install, maintain and pay for a dedicated telephone line, and to notify us at any time of any interruption of such telephone service. If requested, you will provide the proper wiring diagrams for the equipment covered. These diagrams will remain your property, and will be maintained by Schindler for use in troubleshooting and servicing the equipment.

Schindler Dashboard and Dashboard Mobile are communication technologies that provide access to real-time information about your equipment including: performance history, reports, push notifications, service call records, unit profiles and more.

The three subscription tiers for Schindler Digital are:

Digital Connect – Schindler's Digital Connect package provides wireless cellular communication from your equipment's controller to Schindler's data network. This allows Schindler Direct to be connected to your equipment 24/7. Digital connect also provides access to the basic features of Dashboard and Dashboard Mobile, giving you real time information on your equipment.

Digital Enhanced – The Enhanced Package includes Digital Connect, plus access to Schindler's Digital Support Team. This team analyzes information gathered by Schindler Direct, which improves the reliability of your equipment and improves the response time. The Digital Support Team can alert you when a shutdown is detected, helps confirm issues remotely, and provides real-time ETAs for technicians en route. With these enhanced diagnostics, we can guarantee that you will not be charged for Running on Arrival calls. Under the "No Running on Arrival Guarantee," Schindler will fully cover the cost of any callback during regular hours related to the following situations: Elevator or Escalator Running in normal operation, or running under any of the following special services modes: Independent service, Fireman's service (Phase I or Phase II), or Inspection operation. All other callbacks will be billed as outlined in the service agreement.

Digital Premium (Coming Soon) – The premium package is our top tier, and was created for customers requiring the most comprehensive level of service. Our premium package offers the highest level of functionality and support. The Premium tier also includes concierge level assistance for all of your service needs.

During the term of this agreement, you have the ability to adjust the tier you have selected at your convenience.

CALLBACK RESPONSE TIME

We will perform the services during our regular working hours of regular working days, excluding elevator trade holidays. We will provide callback service during regular working hours. We will respond to callbacks within 24 hours of notification. If you authorize services or callbacks outside the scope of this agreement, you will pay us at our standard billing rates, plus materials not covered by contract, expenses and travel.

HOURS OF SERVICE

We will perform the services during our regular working hours of regular working days, excluding elevator trade holidays. The services include callbacks for emergency minor adjustment callbacks during regular working hours. If you authorize callbacks outside regular working hours, you will pay us at our standard billing rates, plus materials not covered by contract, expenses and travel. All other work outside the services will be billed at our standard billing rates. A request for service will be considered an "emergency minor adjustment callback" if it is to correct a malfunction or adjust the equipment and requires immediate attention and is not caused by misuse, abuse or other factors beyond our control. The term does not include any correction or adjustment that requires more than one technician or more than two hours to complete.

TERM

This Agreement commences on April 01, 2017, and continues until March 31, 2020, and shall renew (where permitted by applicable local law) for subsequent similar periods, unless terminated by either party upon written notice received by the other party at least 90 days prior to the above termination date or any renewal termination date, and not more than 120 days before the termination date.

PRICE

In consideration of the services provided hereunder, you agree to pay us the sum of \$2,980.00 per month, payable in annual installments of \$35,760.00, exclusive of applicable taxes, unless another payment frequency option is selected below.

This Agreement does not include Schindler Digital. If you would like to choose a Schindler Digital tier, please indicate by checking below:

- ☐ Upgrade to the Digital Connect Package - \$10 per unit, per month addition.
- ☐ Upgrade to the Digital Enhance Package - \$20 per unit, per month addition.

The packages above are dependent upon applicable equipment type and hardware installation, which will be installed at the owner's expense. Please contact your Schindler Rep for more information.

PRICE ADJUSTMENT

The contract Price and labor rates for extra work will be adjusted annually in January. This adjustment will be based upon the local labor rate adjustment for the year in which it is adjusted, and will be increased or decreased on the basis of changes to the local straight time hourly rate for mechanics. If there is a delay in determining a new labor rate, or an interim determination of a new labor rate, we will notify you and adjust the price at the time of such determination, and we will retroactively bill or issue credit, as appropriate, for the period of such delay. We also reserve the right to adjust the contract price quarterly / annually on the basis of changes in other expenses such as fuel, waste disposal, government regulations or administrative costs. Should you elect to take the annual pre-payment option, the price adjustment date will default to coincide with the invoice date.

The annual contract price adjustment will not apply to Schindler Digital. Schindler reserves the right to make adjustments to the monthly fee for the Schindler Digital tiers as additional value added features and functionality are added to the selected offering.

The attached terms and conditions are incorporated herein by reference.

Acceptance by you as owner's agent or authorized representative and subsequent approval by our authorized representative will be required to validate this agreement.

Proposed:



By: Ryan Haines

For: Schindler Elevator Corporation

Title: Sales Representative

Date: February 10, 2017

Accepted:

By: _____

For: City Of Manhattan Beach

Title: _____

Date: _____

Approved:



By: Denis Davis

Title: District Manager

Date: 2-24-17

TERMS AND CONDITIONS

1. This is the entire Agreement between us, and no other terms or conditions shall apply. This service proposal does not void or negate the terms and conditions of any existing service agreement unless fully executed by both parties. No services or work other than specifically set forth herein are included or intended by this Agreement.
2. You retain your responsibilities as Owner and/or Manager of the premises and of the Equipment. You will provide us with clear and safe access to the Equipment and a safe workplace for our employees as well as a safe storage location for parts and other materials to be stored on site which remain our property, in compliance with all applicable regulations related thereto, you will inspect and observe the condition of the Equipment and workplace and you will promptly report potentially hazardous conditions and malfunctions, and you will call for service as required; you will promptly authorize needed repairs or replacements outside the scope of this Agreement, and observe all testing and reporting responsibilities based upon local codes. You will not permit others to work on the Equipment during the term of this Agreement. You agree that you will authorize and pay for any proposed pre-maintenance repairs or upgrades (including any such repairs or upgrades proposed during the first 30 days of this agreement), or we will have the option to terminate this Agreement immediately, without penalty to us. You agreed to post and maintain necessary instructions and / or warnings relating to the equipment.
3. We will not be liable for damages of any kind, whether in contract or in tort, or otherwise, in excess of the annual price of this Agreement. We will not be liable in any event for special, indirect or consequential damages, which include but are not limited to loss of rents, revenues, profit, good will, or use of Equipment or property, or business interruption.
4. Neither party shall be responsible for any loss, damage, detention or delay caused by labor trouble or disputes, strikes, lockouts, fire, explosion, theft, lightning, wind storm, earthquake, floods, storms, riot, civil commotion, malicious mischief, embargoes, shortages of materials or workmen, unavailability of material from usual sources, government priorities or requests or demands of the National Defense Program, civil or military authority, war, insurrection, failure to act on the part of either party's suppliers or subcontractors, orders or instructions of any federal, state, or municipal government or any department or agency thereof, acts of God, or by any other cause beyond the reasonable control of either party. Dates for the performance or completion of the work shall be extended by such delay of time as may be reasonably necessary to compensate for the delay.
5. You will assign this Agreement to your successor in interest, should your interest in the premises cease prior to the initial or any renewal termination date. If this Agreement is terminated prematurely for any reason, other than our default, including failure to assign to a successor in interest as required above, you will pay as liquidated damages (but not penalty) one-half of the remaining amount due under this Agreement.
6. The Equipment consists of mechanical and electrical devices subject to wear and tear, deterioration, obsolescence and possible malfunction as a result of causes beyond our control. The services do not guarantee against failure or malfunction, but are intended to reduce wear and prolong useful life of the Equipment. We are not required to perform tests other than those specified previously, to install new devices on the equipment which may be recommended or directed by insurance companies, federal, state, municipal or other authorities, to make changes or modifications in design, or to make any replacements with parts of a different design. We are responsible to perform such work as is required due to ordinary wear and tear. We are not responsible for any work required, or any claims, liabilities or damages, due to: obsolescence; accident; abuse; misuse; vandalism; adverse machine room conditions (including temperature variations below 60 degrees and above 90 degrees Fahrenheit) or excessive humidity; overloading or overcrowding of the Equipment beyond the limits of the applicable codes; adverse premises or environmental conditions, power fluctuations, rust, or any other cause beyond our control. We will not be responsible for correction of outstanding violations or test requirements cited by appropriate authorities prior to the effective date of this agreement.
7. Invoices (including invoices for extra work outside the fixed price) will be paid upon presentation, on or before the last day of the month prior to the billing period. Late or non-payments will result in:
 - (a) Interest on past due amounts at 1½% per month or the highest legal rate available;
 - (b) Termination of the Agreement on ten (10) days prior written notice; and
 - (c) Attorneys' fees, cost of collection and all other appropriate remedies for breach of contract.

8. If either party to this Agreement claims default by the other, written notice of at least 30 days shall be provided, specifically describing the default. If cure of the default is not commenced within the thirty-day notification period, this Agreement may be terminated. In the event of litigation, the prevailing party will be entitled to its reasonable attorneys' fees and costs. If you elect to modernize any or all of the Equipment during the term of this agreement, you will give us the option, within a reasonable time, to prepare an offer for the work and/or evaluate competitor proposals and compare scope of work and price. If we are unable to match price and scope of work, or present an alternative proposal, this Agreement may be canceled with ninety (90) days written notice.

9. Any proprietary material, information, data or devices contained in the equipment or work provided hereunder, or any component or feature thereof, remains our property. This includes, but is not limited to, any tools, devices, manuals, software (which is subject to a limited license for use in this building/premises/ equipment only), modems, source/ access/ object codes, passwords and the Schindler Direct feature ("SD") (if applicable) which we will deactivate and remove if the Agreement is terminated.

10. You will prevent access to the Equipment, including the SD feature and/or dedicated telephone line if applicable, by anyone other than us. We will not be responsible for any claims, losses, demands, lawsuits, judgment, verdicts, awards or settlements ("claims") arising from the use or misuse of SD, if it or any portion of it has been modified, tampered with, misused or abused. We will not be responsible for use, misuse, or misinterpretation of the reports, calls, signals, alarms or other such SD output, nor for claims arising from acts or omissions of others in connection with SD or from interruptions of telephone service to SD regardless of cause. You agree that you will defend, indemnify and hold us harmless from and against any such claims, and from any and all claims arising out of or in connection with this Agreement, and/or the Equipment, unless caused directly and solely by our established fault.

11. Should this Agreement be accepted by you in the form of a purchase order, the terms and conditions of this Agreement will take precedence over those of the purchase order.

12. Schindler Elevator Corporation is insured at all locations where it undertakes business for the type of insurance. You agree to accept, named as certificate holder, in full satisfaction of the insurance requirements for this Agreement, our standard Certificate of Insurance. Limits of liability as follows:

(a) Workers' Compensation - Equal to or in excess of limits of Workers' Compensation laws in all states and the District of Columbia.

(b) Comprehensive Liability - Up to Two Million Dollars (\$2,000,000.00) single limit per occurrence, Products/Completed Ops Aggregate \$5,000,000.

(c) Auto Liability - \$5,000,000 CSL.

(d) Employer's Liability - \$5,000,000 Each Accident/Employee/Policy Limit.

13. You hereby authorize us to produce single copies of the EPROM and/or ROM chips for each elevator subject to this Agreement for the sole purpose of archival back-up of the software embodied therein. The duplicate chip(s) for a given elevator shall be identified by serial number, or other means, and shall be stored on the building premises in a secured area in the elevator equipment room or you may retain possession. We agree that back-up chips are not for the benefit of purchase or sale, or for use in other elevator systems, and shall be used for no other purpose than the replacement of a defective or damaged chip on the particular elevator. In the event that your continued possession of the computer program should cease to be rightful, we agree that all such archival copies shall be destroyed.

14. You acknowledge that certain replacement parts, such as printed circuit boards or control related parts, may be difficult to obtain. While we do not anticipate problems or delays obtaining such parts, it may be necessary or desirable for you to order such parts directly from the original equipment manufacturer ("OEM"). You agree, in such event, to order parts promptly from the OEM, at any time and from time to time, as specified by us. We agree to reimburse you for the reasonable cost of such parts (as covered by this Agreement) promptly upon receipt from you of copies of the invoice(s) together with appropriate payment documentation.

15. Should conditions arise requiring use of the OEM diagnostic tool, we will promptly notify you. You agree, in such event, to promptly contact the OEM for diagnostic service and repair. You will be responsible for all costs related to such service and repair. You further agree that we shall not be responsible for any delays, damage, costs or claims associated with you or OEM's failure to timely provide a diagnostic tool, and you will indemnify, defend and hold us harmless from any such delays, damage, cost or claim.

EXHIBIT B
TERMS FOR COMPLIANCE WITH CALIFORNIA LABOR LAW REQUIREMENTS

1. This Agreement calls for services that, in whole or in part, constitute “public works” as defined in Division 2, Part 7, Chapter 1 (commencing with Section 1720) of the California Labor Code (“Chapter 1”). Further, Contractor acknowledges that this Agreement is subject to (a) Chapter 1 and (b) the rules and regulations established by the Department of Industrial Relations (“DIR”) implementing such statutes. Therefore, as to those Services that are “public works”, Contractor shall comply with and be bound by all the terms, rules and regulations described in 1(a) and 1(b) as though set forth in full herein.
2. California law requires the inclusion of specific Labor Code provisions in certain contracts. The inclusion of such specific provisions below, whether or not required by California law, does not alter the meaning or scope of Section 1 above.
3. Contractor shall be registered with the Department of Industrial Relations in accordance with California Labor Code Section 1725.5, and has provided proof of registration to City prior to the Effective Date of this Agreement. Contractor shall not perform work with any subcontractor that is not registered with DIR pursuant to Section 1725.5. Contractor and subcontractors shall maintain their registration with the DIR in effect throughout the duration of this Agreement. If the Contractor or any subcontractor ceases to be registered with DIR at any time during the duration of the project, Contractor shall immediately notify City.
4. Pursuant to Labor Code Section 1771.4, Contractor’s Services are subject to compliance monitoring and enforcement by DIR. Contractor shall post job site notices, as prescribed by DIR regulations.
5. Pursuant to Labor Code Section 1773.2, copies of the prevailing rate of per diem wages for each craft, classification, or type of worker needed to perform the Agreement are on file at City Hall and will be made available to any interested party on request. Contractor acknowledges receipt of a copy of the DIR determination of such prevailing rate of per diem wages, and Contractor shall post such rates at each job site covered by this Agreement.
6. Contractor shall comply with and be bound by the provisions of Labor Code Sections 1774 and 1775 concerning the payment of prevailing rates of wages to workers and the penalties for failure to pay prevailing wages. The Contractor shall, as a penalty to City, forfeit \$200.00 for each calendar day, or portion thereof, for each worker paid less than the prevailing rates as determined by the DIR for the work or craft in which the worker is employed for any public work done pursuant to this Agreement by Contractor or by any subcontractor.
7. Contractor shall comply with and be bound by the provisions of Labor Code Section 1776, which requires Contractor and each subcontractor to: keep

accurate payroll records and verify such records in writing under penalty of perjury, as specified in Section 1776; certify and make such payroll records available for inspection as provided by Section 1776; and inform City of the location of the records.

8. Contractor shall comply with and be bound by the provisions of Labor Code Sections 1777.5, 1777.6 and 1777.7 and California Administrative Code title 8, section 200 *et seq.* concerning the employment of apprentices on public works projects. Contractor shall be responsible for compliance with these aforementioned Sections for all apprenticeable occupations. Prior to commencing work under this Agreement, Contractor shall provide City with a copy of the information submitted to any applicable apprenticeship program. Within 60 days after concluding work pursuant to this Agreement, Contractor and each of its subcontractors shall submit to City a verified statement of the journeyman and apprentice hours performed under this Agreement.
9. The Contractor shall not perform Work with any Subcontractor that has been debarred or suspended pursuant to California Labor Code Section 1777.1 or any other federal or state law providing for the debarment of contractors from public works. The Contractor and Subcontractors shall not be debarred or suspended throughout the duration of this Contract pursuant to Labor Code Section 1777.1 or any other federal or state law providing for the debarment of contractors from public works. If the Contractor or any subcontractor becomes debarred or suspended during the duration of the project, the Contractor shall immediately notify City.
10. Contractor acknowledges that eight hours labor constitutes a legal day's work. Contractor shall comply with and be bound by Labor Code Section 1810. Contractor shall comply with and be bound by the provisions of Labor Code Section 1813 concerning penalties for workers who work excess hours. The Contractor shall, as a penalty to City, forfeit \$25.00 for each worker employed in the performance of this Agreement by the Contractor or by any subcontractor for each calendar day during which such worker is required or permitted to work more than eight hours in any one calendar day and 40 hours in any one calendar week in violation of the provisions of Division 2, Part 7, Chapter 1, Article 3 of the Labor Code. Pursuant to Labor Code section 1815, work performed by employees of Contractor in excess of eight hours per day, and 40 hours during any one week shall be permitted upon public work upon compensation for all hours worked in excess of eight hours per day at not less than one and one-half times the basic rate of pay.
11. California Labor Code Sections 1860 and 3700 provide that every employer will be required to secure the payment of compensation to its employees. In accordance with the provisions of California Labor Code Section 1861, Contractor hereby certifies as follows:

"I am aware of the provisions of Section 3700 of the Labor Code which require every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of that code, and I will comply with such provisions before commencing the performance of the work of this contract."

12. For every subcontractor who will perform work on the project, Contractor shall be responsible for such subcontractor's compliance with Chapter 1 and Labor Code Sections 1860 and 3700, and Contractor shall include in the written contract between it and each subcontractor a copy of those statutory provisions and a requirement that each subcontractor shall comply with those statutory provisions. Contractor shall be required to take all actions necessary to enforce such contractual provisions and ensure subcontractor's compliance, including without limitation, conducting a periodic review of the certified payroll records of the subcontractor and upon becoming aware of the failure of the subcontractor to pay his or her workers the specified prevailing rate of wages. Contractor shall diligently take corrective action to halt or rectify any failure.
13. To the maximum extent permitted by law, Contractor shall indemnify, hold harmless and defend (at Contractor's expense with counsel reasonably acceptable to City) City, its officials, officers, employees, agents and independent contractors serving in the role of City officials, and volunteers from and against any demand or claim for damages, compensation, fines, penalties or other amounts arising out of or incidental to any acts or omissions listed above by any person or entity (including Contractor, its subcontractors, and each of their officials, officers, employees and agents) in connection with any work undertaken or in connection with the Agreement, including without limitation the payment of all consequential damages, attorneys' fees, and other related costs and expenses. All duties of Contractor under this Section shall survive the termination of the Agreement.