

THIS PRINT COVERS CALENDAR ITEM NO. : 10.3

**SAN FRANCISCO
MUNICIPAL TRANSPORTATION AGENCY**

DIVISION: Transit Service

BRIEF DESCRIPTION:

Authorizing the Director of Transportation to execute Master Agreements with Kone Inc., Schindler Elevator Corporation, and ThyssenKrupp Elevator Corporation for the maintenance of elevators and escalators in the Muni Metro System and at various facilities for a period not to exceed five years from September 15, 2017 through September 14, 2022, in an amount not to exceed \$5,000,000 for each agreement.



SUMMARY:

- The Municipal Transportation Agency operates a total of fifty-two elevators and escalators.
- The elevators in the Muni Metro Subway, which provide critical access to platform, station and street levels, have not been upgraded since the system was built in the 1970s. Elevators experience high failure rates as a result, which have led to several recent breakdowns and entrapments.
- The SFMTA must seek price quotations from pre-qualified service providers with Master Agreements. The SFMTA must issue a contract service order for the work to be performed by the provider that will best serve the public interest.
- The three Master Agreements are necessary for the continued maintenance and repair of the elevators and escalators in the SFMTA's Muni Metro stations.
- The SFMTA has determined that the work involved in the proposed Master Agreements is categorically exempt from the California Environmental Quality Act (CEQA).
- The proposed action is the Approval Action as defined by the S.F. Administrative Code Chapter 31.

ENCLOSURES:

1. SFMTAB Resolution
2. Master Agreement with Kone Inc.
3. Master Agreement with Schindler Elevator Corporation
4. Master Agreement with ThyssenKrupp Elevator Corporation

APPROVALS:

	DATE
DIRECTOR 	8/28/2017
SECRETARY 	8/28/2017

ASSIGNED SFMTAB CALENDAR DATE: September 5, 2017

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PURPOSE

Authorizing the Director of Transportation to execute Master Agreements with Kone Inc., Schindler Elevator Corporation, and ThyssenKrupp Elevator Corporation for the maintenance of elevators and escalators in the Muni Metro System and at various facilities for a period not to exceed five years from September 15, 2017 through September 14, 2022, in an amount not to exceed \$5,000,000 for each agreement.

STRATEGIC PLAN GOALS AND TRANSIT FIRST POLICY PRINCIPLES

These Master Service agreements would assist in the implementation of the following goals, objectives and initiatives of the SFMTA 2013-2018 Strategic Plan:

Goal 1: Create a safer transportation experience for everyone.

Objective 1.3: Improve the safety of the transportation system

Goal 2: Make transit, walking, bicycling, taxi, ridesharing and car sharing the preferred means of travel.

Objective 2.2: Improve transit performance.

Goal 3: Improve the environment and quality of life in San Francisco

Objective 3.4: Deliver services efficiently.

This action supports the following Transit First Policy Principles:

1. To ensure quality of life and economic health in San Francisco, the primary objective of the transportation system must be the safe and efficient movement of people and goods.
2. Pedestrian areas shall be enhanced wherever possible to improve the safety and comfort of pedestrians and to encourage travel by foot.
3. Public transit, including taxis and vanpools, is an economically and environmentally sound alternative to transportation by individual automobiles. Within San Francisco, travel by public transit, by bicycle and on foot must be an attractive alternative to travel by private automobile.

DESCRIPTION

Background

The Municipal Transportation Agency, operates a total of fifty-two elevators and escalators. Forty elevators and escalators are located in the Muni Metro System. The twelve remaining elevators are located at other facilities.

In 2005, San Francisco Administrative Code Section 6.65 was amended to require the execution of a Master Agreement for elevator and escalator inspection, maintenance, and repair on an as-

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needed basis. For the performance of specific work, the SFMTA must seek price quotations from pre-qualified service providers with Master Agreements. The SFMTA must issue a contract service order for the work to be performed by the provider submitting the lowest price quotation unless the public interest would best be served by accepting a price quotation that SFMTA staff determines would best serve the public interest.

The elevators in the Muni Metro Subway provide critical access to platform, station and street levels, but have not been upgraded since the system was built in the 1970s. Elevators experience high failure rates as a result, which have led to several recent breakdowns and entrapments. The Subway Elevator Safety Reliability Project will replace several components that are most prone to equipment failure, including door operators, landing doors, cab doors, door tracks, sills and sill angles, thus extending their useful life and improving reliability. These upgrades are especially necessary for ensuring accessibility concerns for seniors and people with disabilities. Potential work under the Subway Elevator Safety Reliability Project includes the following stations: Van Ness (two elevators); Church (three elevators); Castro (three elevators) and Forest Hill (four elevators). These Master Agreements will allow SFMTA staff to issue contract service orders for these companies to work on various projects including the Subway Elevator Safety Reliability Project.

The current Master Agreements with Schindler, Kone, and ThyssenKrupp Elevator, who currently repair and maintain approximately 95% of the SFMTA's elevator and escalator equipment, are near the end of their terms and will expire in approximately 6 months – on or about February 18, 2018. It is crucial that there not be any gaps in service coverage so that the SFMTA continues to have the ability to seek bids from these contractors for future elevator and escalator repair and maintenance work. As a result, these Master Agreements will allow these contractors to continue to submit bids for repair and maintenance work for recently upgraded equipment at various Muni Metro stations, while ensuring a competitive procurement process. However, we are now seeking approval for Master Agreements commencing September 15, 2017 for the next five years due to the fact that we have depleted funding for the current Master Agreements that expire on February 18, 2018.

STAKEHOLDER ENGAGEMENT

With the execution of these Master Agreements for Maintenance Services, various upgrade projects will be implemented. For the Subway Elevator Safety Reliability Upgrade Project, Accessible Services staff performed outreach with various groups. The Project was well received by the residents and merchants in close proximity to the stations and they look forward to upgraded and improved elevator systems within our subway.

ALTERNATIVES CONSIDERED

Per Administrative Code Section 6.65, the execution of Master Agreements is necessary for elevator and escalator inspection, maintenance, and repair on an as-needed basis. Having more than two elevator/escalator contractors with Master Agreements with the SFMTA ensures a more competitive bidding process. Therefore, no alternatives were considered.

FUNDING IMPACT

The work performed under these Agreements has capital and maintenance elements. Capital costs are estimated at \$2,950,000 and will be funded with \$345,569 in Series 2014 SFMTA Revenue bonds, \$2,317,431 in State Proposition 1B Infrastructure Bonds (PTMISEA), and \$287,000 in Proposition AA vehicle registration fee revenues. The remaining \$2,050,000 will come from operating funds to pay for maintenance of the elevators. Per Administrative Code Section 6.65, the execution of Master Agreements is necessary in order for SFMTA to seek price quotations. The dollar amount of work that would result from these Master Agreements will not exceed \$5,000,000.

ENVIRONMENTAL REVIEW

The proposed Subway Elevator Safety Reliability Upgrade Project is subject to the California Environmental Quality Act (CEQA). Title 14 of the California Code of Regulations Section 15301 provides an exemption from environmental review for operation, repair, maintenance, or minor alteration of existing public structures, facilities, or mechanical equipment.

On August 12, 2016, the SFMTA, under authority delegated by the Planning Department, determined that the work involved in the proposed Agreements is categorically exempt from CEQA pursuant to Title 14 of the California Code of Regulations Section 15301.

The proposed action is the Approval Action as defined by the S. F. Administrative Code Chapter 31. A copy of the CEQA determination is on file with the Secretary to the SFMTA Board of Directors and is incorporated herein by reference.

OTHER APPROVALS RECEIVED OR STILL REQUIRED

No other approvals are necessary.

The City Attorney's Office has reviewed this calendar item.

RECOMMENDATION

Staff recommends that the SFMTA Board of Directors authorize the Director of Transportation to execute Master Agreements with Kone Inc., Schindler Elevator Corporation, and ThyssenKrupp Elevator Corporation for the maintenance of elevators and escalators in the Muni Metro System and at various facilities for a period not to exceed five years, from September 15, 2017 through September 14, 2022, in an amount not to exceed \$5,000,000 for each agreement.

SAN FRANCISCO
MUNICIPAL TRANSPORTATION AGENCY
BOARD OF DIRECTORS

RESOLUTION No. _____

WHEREAS, San Francisco Administrative Code section 6.65 provides that departments shall award master agreements on an as need basis to contractors who can establish experience, expertise, and quality of work; and,

WHEREAS, For contracts that exceed \$500,000, the Director of Transportation is authorized to execute a master agreement upon approval by the SFMTA Board of Directors; and,

WHERE These Master Agreements are necessary for continued and uninterrupted critical repair and maintenance work on the elevator and escalators within the SFMTA's Muni Metro System since Schindler, Kone, and ThyssenKrupp Elevator currently repair and maintain approximately 95% of the SFMTA's elevator and escalator equipment; and,

WHEREAS, The proposed Subway Elevator Safety Reliability Upgrade Project is subject to the California Environmental Quality Act (CEQA); Title 14 of the California Code of Regulations Section 15301 provides an exemption from environmental review for operation, repair, maintenance, or minor alteration of existing public structures, facilities, or mechanical equipment; and,

WHEREAS, On August 12, 2016, the SFMTA, under authority delegated by the Planning Department, determined that the work involved in the proposed Master Agreements is categorically exempt from CEQA pursuant to Title 14 of the California Code of Regulations Section 15301; and,

WHEREAS, The proposed action is the Approval Action as defined by the S. F. Administrative Code Chapter 31; and,

WHEREAS, A copy of the CEQA determination is on file with the Secretary to the SFMTA Board of Directors and is incorporated herein by reference; now, therefore be it

RESOLVED, That the SFMTA Board of Directors authorizes the Director of Transportation to execute a Master Service Agreement with Kone Inc., for the maintenance of elevators and escalators in the Muni Metro System and at various facilities in an amount not to exceed \$5,000,000 for a term of five years from September 15, 2017 through September 14, 2022; and be it further

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RESOLVED, That the SFMTA Board of Directors authorizes the Director of Transportation to execute a Master Service Agreement with Schindler Elevator Corporation for the maintenance of elevators and escalators in the Muni Metro System and at various facilities in an amount not to exceed \$5,000,000 for a term of five years from September 15, 2017 through September 14, 2022; and be it further

RESOLVED, That the SFMTA Board of Directors authorizes the Director of Transportation to execute a Master Service Agreement with ThyssenKrupp Elevator Corporation for the maintenance of elevators and escalators in the Muni Metro System and at various facilities in an amount not to exceed \$5,000,000 for a term of five years from September 15, 2017 through September 14, 2022.

I certify that the foregoing resolution was adopted by the San Francisco Municipal Transportation Agency Board of Directors at its meeting of September 5, 2017.

Secretary to the Board of Directors
San Francisco Municipal Transportation Agency

CITY AND COUNTY OF SAN FRANCISCO
MUNICIPAL TRANSPORTATION AGENCY

(SFMTA-2017-40)

**MASTER AGREEMENT FOR SPECIAL SERVICES
UNDER SAN FRANCISCO ADMINISTRATIVE CODE §6.65**

AGREEMENT BETWEEN THE CITY AND COUNTY OF SAN FRANCISCO AND

KONE INC.

This Agreement is made this ____ day of September 2017, in the City and County of San Francisco, State of California, by and between:

Kone Inc.
15021 Wicks Boulevard
San Leandro, Ca 94577

hereinafter referred to as "Contractor," and City and County of San Francisco, a municipal corporation, hereinafter referred to as "City," acting by and through its Municipal Transportation Agency, hereinafter referred to as the "MTA."

Recitals

WHEREAS, the Municipal Transportation Agency wishes to inspect, maintain, and repair elevator and escalator equipment on an if- and as-needed basis at various MTA-owned and/or operated facilities in accordance with the provisions specified in the San Francisco Administrative Code Section 6.65; and,

WHEREAS, Contractor understands that the continuous, safe operation of elevator and escalator equipment is imperative to the MTA in order for the agency to provide transit services to its passengers; and,

WHEREAS, Contractor understands that any delay in repairing MTA-owned elevator and escalator equipment may subject the MTA to possible fines, breach of its legal obligations to provide accessible access, and monetary penalties; and,

WHEREAS, Contractor understands that time is of the essence in repairing MTA-owned elevator and escalator equipment in order to avoid any delay in the operation of MTA-owned elevator and escalator equipment; and,

WHEREAS, Contractor represents and warrants that it is qualified and has the special expertise and experience to perform the services required for City as set forth under this contract; and,

WHEREAS, approval for said Agreement was obtained from the Civil Service Commission by Resolution No. PSC #Not Applicable dated Not Applicable

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Now, THEREFORE, the parties agree as follows:

1. Definitions

Where any word or phrase defined below, or a pronoun used in place thereof, is used in any part of this Agreement and Specifications, it shall have the meaning herein set forth.

AUTHORIZATION: Contract Order of the City and County of San Francisco properly executed by the Director of Transportation and certified by the Controller for the specific funding of this Agreement or any modification thereof.

CITY: City and County of San Francisco, a municipal corporation.

CONTRACTOR: Kone Inc.

CONTROLLER: Controller of the City and County of San Francisco.

DIRECTOR: Director of Transportation of the City and County of San Francisco.

WORK: The work to be done in providing the services as described and specific in Appendix A, Appendix B, and any Contract Service Order(s) (CSO) issued under this Agreement.

Whenever the words "as directed", "as required", "as permitted", or words of like effect are used, it shall be understood as the direction, requirement, or permission of the MTA. The words "sufficient", "necessary", or "proper", and the like, mean sufficient, necessary or proper in the judgment of the MTA. The words "approval", "acceptable", "satisfactory", or words of like import, shall mean approved by, or acceptable to, or satisfactory to the Department of MTA, unless otherwise indicated by the context.

2. Certification of Funds; Budget and Fiscal Provisions; Termination in the Event of Non-Appropriation

This Agreement is subject to the budget and fiscal provisions of the City Charter. Charges will accrue only after prior written authorization certified by the Controller, and the amount of City's obligation hereunder shall not at any time exceed the amount certified for the purpose and period stated in such advance authorization.

This Agreement will terminate without penalty, liability or expense of any kind to City at the end of any fiscal year in the event funds are not appropriated for the next succeeding fiscal year. If funds are appropriated for a portion of the fiscal year, this Agreement will terminate, without penalty, liability or expense of any kind at the end of the term for which funds are appropriated.

City has no obligation to make appropriations for this Agreement in lieu of appropriations for new or other agreements. City budget decisions are subject to the discretion of the Mayor and the Board of Supervisors. Contractor's assumption of risk of possible non-appropriation is part of the consideration for this Agreement.

THIS SECTION CONTROLS AGAINST ANY AND ALL OTHER PROVISIONS OF THIS AGREEMENT.

3. Term of the Agreement

Subject to Section 2, the term of this Agreement shall be from September 15, 2017 through September 14, 2022

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4. Effective Date of Agreement

This Agreement shall become effective when the Controller has certified to the availability of funds and Contractor has been notified in writing.

5. Services Contractor Agrees to Perform

The Contractor agrees to perform the basic services at the standards provided for in **Appendix A**, "Services and Standards of Performance under Master Agreement For Special Services For Elevator and Escalator," attached hereto and incorporated by reference as though fully set forth herein.

Contractor acknowledges and agrees that this Agreement does not guarantee Contractor any work. For the performance of most specific tasks, the Department, at its sole discretion, shall seek price quotations from at least three special service providers with Master Agreements. The Department shall issue a Contract Service Order ("CSO") for the work to the provider submitting the lowest quotation. In the event that the Department is unable to obtain three quotations, the Director shall base the issuance of the CSO on the quote or quotes received. The Department reserves the right to reject any and all quotes for any reason or no reason. The Director may accept other than the lowest quotation if, in his/her discretion, the public interest would best be served.

The Contractor acknowledges and agrees that once the Department issues a CSO under this Agreement, the scope of work and price as set forth in the CSO shall be binding on Contractor as though fully incorporated into this Agreement.

6. Compensation

Compensation shall be made in monthly payments on or before the 30th day of each month for work, as set forth in Section 5 of this Agreement, that the Director, in his or her sole discretion, concludes has been performed as of the 30th day of the immediately preceding month. In no event shall the amount of this contract exceed five million dollars **\$5,000,000**.

No charges shall be incurred under this Agreement nor shall any payments become due to Contractor until reports, services, or both, required under this Agreement are received from Contractor and approved by the MTA as being in accordance with this Agreement.

In no event shall City be liable for interest or late charges for any late payments.

7. Method of Payment

Invoices furnished by Contractor under this Agreement must be in a form acceptable to Director and Controller. All amounts paid by City to Contractor shall be subject to audit by City.

Payment shall be made by City to Contractor at the address stated hereinabove.

8. Disallowance

In the event Contractor claims or receives payment from City for a service, reimbursement for which is later disallowed by City or State of California or United States Government, Contractor shall promptly refund the disallowed amount to City upon City's request. At its option, City may offset the amount disallowed from any payment due or to become due to Contractor under this Agreement or any other Agreement.

9. Taxes

Payment of any taxes, including California Sales and Use Taxes, levied upon this Agreement, the transaction, or the services delivered pursuant hereto, shall be the obligation of Contractor. Contractor recognizes and understands that this Agreement may create a "possessory interest" for property tax purposes. Generally, such a possessory interest is not created unless the Agreement entitles the Contractor to possession, occupancy, or use of City property for private gain. If such a possessory interest is created, then the following shall apply:

- a. Contractor, on behalf of itself and any permitted successors and assigns, recognizes and understands that Contractor, and any permitted successors and assigns, may be subject to real property tax assessments on the possessory interest;
- b. Contractor, on behalf of itself and any permitted successors and assigns, recognizes and understands that the creation, extension, renewal, or assignment of this Agreement may result in a "change in ownership" for purposes of real property taxes, and therefore may result in a revaluation of any possessory interest created by this Agreement. Contractor accordingly agrees on behalf of itself and its permitted successors and assigns to report on behalf of the City to the County Assessor the information required by Revenue and Taxation Code section 480.5, as amended from time to time, and any successor provision.
- c. Contractor, on behalf of itself and any permitted successors and assigns, recognizes and understands that other events also may cause a change of ownership of the possessory interest and result in the revaluation of the possessory interest. (see, e.g., Rev. & Tax. Code section 64, as amended from time to time). Contractor accordingly agrees on behalf of itself and its permitted successors and assigns to report any change in ownership to the County Assessor, the State Board of Equalization or other public agency as required by law.
- d. Contractor further agrees to provide such other information as may be requested by the City to enable the City to comply with any reporting requirements for possessory interests that are imposed by applicable law.

10. Payment Does Not Imply Acceptance of Work

The granting of any progress payment by City, or the receipt thereof by Contractor, shall in no way lessen the liability of Contractor to replace unsatisfactory work or material although the unsatisfactory character of such work or material may not have been apparent or detected at the time such payment was made. Materials, components, or workmanship which do not conform to the Specifications will be rejected and shall be replaced by Contractor without delay.

11. Qualified Personnel

Work under this Agreement shall be performed only by competent personnel under the supervision of and in the employment of Contractor. Contractor will conform with City's reasonable requests regarding assignment of personnel, but all personnel, including those assigned at City's request, shall be supervised by Contractor. Contractor shall commit adequate resources to complete the project within the project schedule specified in this Agreement.

12. Responsibility for Equipment

City shall not be responsible for any damage to persons or property as a result of the use, misuse or failure of any equipment used by Contractor, or by any of its employees, even though such equipment be furnished, rented or loaned to Contractor by City. The acceptance or use of such equipment by Contractor or any of its employees shall be construed to mean that Contractor accepts full responsibility for and agrees to exonerate, indemnify, defend and save harmless City from and against any and all claims for any damage or injury of any type arising from the use, misuse or failure of such equipment, whether such damage be to the contractor, its employees, City employees or third

parties, or to property belonging to any of the above.

13. Independent Contractor

Contractor shall be deemed at all times to be an independent Contractor and shall be wholly responsible for the manner in which Contractor performs the service required of Contractor by the terms of this Agreement. Contractor shall be liable for the acts and omissions of it, its employees and its agents. Nothing contained herein shall be construed as creating an employment or agency relationship between City and Contractor. Contractor or any agent or employee of Contractor shall not have employee status with City, nor be entitled to participate in any plans, arrangements, or distributions by City pertaining to or in connection with any retirement, health or other benefits that City may offer its employees. Contractor or any agent or employee of Contractor is liable for the acts and omissions of itself, its employees and its agents. Contractor shall be responsible for all obligations and payments, whether imposed by federal, state or local law, including, but not limited to, FICA, income tax withholdings, unemployment compensation, insurance, and other similar responsibilities related to Contractor's performing services and work, or any agent or employee of Contractor providing same. Nothing in this Agreement shall be construed as creating an employment or agency relationship between City and Contractor or any agent or employee of Contractor.

Any terms in this Agreement referring to direction from City shall be construed as providing for direction as to policy and the result of Contractor's work only, and not as to the means by which such a result is obtained. City does not retain the right to control the means or the method by which Contractor performs work under this Agreement.

Should City, in its discretion, or a relevant taxing authority such as the Internal Revenue Service or the State Employment Development Division, or both, determine that Contractor is an employee for purposes of collection of any employment taxes, the amounts payable under this Agreement shall be reduced by amounts equal to both the employee and employer portions of the tax due (and offsetting any credits for amounts already paid by Contractor which can be applied against this liability). City shall then forward those amounts to the relevant taxing authority.

Should a relevant taxing authority determine a liability for past services performed by Contractor for City, upon notification of such fact by City, Contractor shall promptly remit such amount due or arrange with City to have the amount due withheld from future payments to Contractor under this Agreement (again, offsetting any amounts already paid by Contractor which can be applied as a credit against such liability).

A determination of employment status pursuant to the preceding two paragraphs shall be solely for the purposes of the particular tax in question, and for all other purposes of this Agreement, Contractor shall not be considered an employee of City. Notwithstanding the foregoing, should any court, arbitrator, or administrative authority determine that Contractor is an employee for any other purpose, then Contractor agrees to a reduction in City's financial liability so that City's total expenses under this Agreement are not greater than they would have been had the court, arbitrator, or administrative authority determined that Contractor was not an employee.

14A. Performance Bond and Payment (Labor and Materials) Bond for Contracts in Excess of \$25,000

If the contract amount of this agreement is in excess of \$25,000, Contractor shall submit the Performance and Payment bonds to the MTA when the agreement is awarded as follows:

Contractor shall always have bonds in a total amount equal to or greater than the total dollar value of all CSOs for special services performed under this Agreement.

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Prior to commencing any work under this Agreement, Contractor shall provide an initial Performance Bond in the amount of not less than fifty percent (50%) of the amount of the agreement as awarded or \$50,000, whichever is lower and a Payment (Labor and Materials) Bond in the amount not less than fifty percent (50%) of the amount of the agreement as awarded or \$50,000, whichever is lower. The Contractor may alternatively provide Performance and Payment bonds covering 100% of the total possible compensation amount under paragraph 6 of this Agreement.

The Contractor shall provide additional bonds in accordance with this Paragraph 14A in increments of not less than \$50,000 when the total amount of contracted construction activity for all CSOs approaches or equals \$50,000.

The City will provide forms for bonding. Sureties shall conform to the standards set forth by the City's Risk Manager under San Francisco Administrative Code section 6.22. No work shall commence without the verification of valid Performance and Payment bonds. The City will require Bonds from the entity named in the Agreement and may not accept Bonds from subcontractors.

14B. Insurance

- a. Without in any way limiting Contractor's liability pursuant to Section 15, "Indemnification and General Liability," of this Agreement, Contractor will maintain in force, during the full term of the Agreement, insurance in the following amounts and coverage:
 - (1) Workers' Compensation, in statutory amounts, with Employers' Liability limits not less than \$1,000,000 each accident; and
 - (2) Commercial General Liability Insurance with limits not less than \$1,000,000 each occurrence Combined Single Limit for Bodily Injury and Property Damage, including Contractual Liability, Personal Injury, Products and Completed Operations; and
 - (3) Commercial Automobile Liability Insurance with not less than \$1,000,000 each occurrence Combined Single Limit for Bodily Injury and Property Damage, including Owned, Non-Owned and Hired auto coverage, as applicable.
 - (4) In the event that the Work requires Contractor to provide architectural or engineering design or consultation, Contractor shall submit to the City proof of professional liability insurance with limits not less than \$1,000,000.00 each claim and in the aggregate with respect to negligent acts, errors or omissions, in an deductible not to exceed \$50,000 each claim.
- b. Commercial General Liability and Commercial Automobile Liability Insurance policies shall be endorsed to provide the following:
 - (1) Name as Additional Insured the City and County of San Francisco, its Officers, Agents, and Employees.
 - (2) That such policies are primary insurance to any other insurance available to the Additional Insured, with respect to any claims arising out of this contract, and that insurance applies separately to each insured against whom claim is made or suit is brought.
- c. All policies shall be endorsed to provide:

Thirty (30) days' advance written notice to City of reduction or nonrenewal of coverages or cancellation of coverages for any reason. Notices shall be sent and emailed to the following:

Katherine Kwok
Contracts Administrator

SFMTA, Mechanical Systems Program
425 Geneva Avenue
San Francisco, California 94112
katherine.kwok@sfmta.com

- d. Should any of the required insurance be provided under a claims-made form, Contractor shall maintain such coverage continuously throughout the term of this contract and, without lapse, for a period of three years beyond the contract expiration, to the effect that, should occurrences during the contract term give rise to claims made after expiration of the contract, such claims shall be covered by such claims-made policies.
- e. Should any of the required insurance, other than professional liability, be provided under a form of coverage that includes a general annual aggregate limit or provides that claims investigation or legal defense costs be included in such general annual aggregate limit, such general annual aggregate limit shall be double the occurrence or claims limits specified above.
- f. Should any required insurance lapse during the term of this Agreement, requests for payments originating after such lapse shall not be processed until the City receives satisfactory evidence of reinstated coverage as required by this Agreement, effective as of the lapse date. If insurance is not reinstated, the City may, at its sole option, terminate this Agreement effective on the date of such lapse of insurance.
- g. Before commencing any services or operations under this Agreement, Contractor shall furnish to City certificates of insurance and additional insured policy endorsements with insurers with ratings comparable to A-, VIII or higher, that are authorized to do business in the State of California, and that are satisfactory to City, in form evidencing all coverages set forth above. Contractor shall furnish complete copies of policies of any or all of the above-listed insurance policies promptly upon City request. Failure to maintain insurance shall constitute a material breach of this Agreement.
- h. Approval of the insurance by City shall not relieve or decrease the liability of Contractor hereunder.

15. Indemnification

- a. Consistent with California Civil Code section 2782, Contractor shall assume the defense of, indemnify and hold harmless the City, its boards and commissions, , and all of their officers, agents, members, employees, authorized representatives, or any other persons deemed necessary by any of them acting within the scope of the duties entrusted to them, from all claims, suits, actions, losses and liability of every kind, nature and description, directly or indirectly arising out of, connected with or resulting from the performance of the Work. This indemnification shall not be valid in the instance where the loss is caused by the sole negligence or intentional tort of any person indemnified herein.
- b. The City, its boards and commissions, and all of their officers, agents, members, employees, and authorized representatives shall have no liability to Contractor for any type of special, consequential or incidental damages arising out of or connected with Contractor's Work. This limit of liability applies under all circumstances including, but not limited to, the breach, completion termination, suspension, cancellation or recession of the Work or this Contract, negligence or strict liability by the City, its boards and commissions, and their representatives, consultants or agents.
- c. Contractor acknowledges that any claims, demands, losses, damages, costs, expenses, and legal liability that arise out of, result from, or are in any way connected with the release or spill of any legally designated hazardous material or waste or contaminated material as a result of the

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Work performed under this Contract are expressly within the scope of this indemnity, and that the costs, expenses, and legal liability for environmental investigations, monitoring, containment, removal, repair, cleanup, restoration, remedial work, penalties, and fines arising from the violation of any local, state, or federal law or regulation, disbursements, and other response costs within the scope of this indemnity.

- d. On request, Contractor shall defend any action, claim or suit asserting a claim covered by this indemnity. Contractor shall pay all costs that may be incurred by the City and all indemnified.
- e. Contractor's liability shall not be limited to the amount of insurance coverages required under the Contract Documents.
- f. In the event that Contractor and its insurance carrier(s) in bad faith refuse to negotiate and compensate a third party or parties for property damage or personal injuries which arise out of Contractor's performance of the Work, the City shall have the right to estimate the amount of damages and to pay the same, and the amount so paid shall be deducted from the amount due Contractor under this Contract, or an appropriate amount shall be retained by the City until all suits or claims for said damages shall have been settled or otherwise disposed of and satisfactory evidence to that effect shall have been furnished to the City.

16. Incidental and Consequential Damages

Contractor shall be responsible for incidental and consequential damages to the extent caused by Contractor's negligent acts or omissions. Nothing in this Agreement shall constitute a waiver or limitation or any rights with City may have under applicable law.

17. Liability of City

City's obligations under this contract shall be limited to the payment of the compensation provided for in Section 6 of this Agreement. Notwithstanding any other provision of this Agreement, in no event shall City be liable, regardless of whether any claim is based on contract or tort, for Contractor's own special, consequential, indirect or incidental damages, including, but not limited to, lost profits, arising out of or in connection with this Agreement or the services performed in connection with this Agreement.

18. Liquidated Damages

Contractor acknowledges and agrees that time is of the essence in responding to calls for service and repairs, as set forth in Appendix A of this Agreement, and that failure to respond may result in actual damages to the City which would be extremely difficult to or impracticable to determine. Contractor therefore further acknowledges and agrees that Individual service orders may include liquidated damages, not as a penalty, but as a reasonable estimate of the loss the City would incur based on the delay. Such liquidated damages may be set by the City, at its sole discretion, according to the particular circumstance of the service order. The City may deduct a sum representing the liquidated damages from any money due to Contractor.

19. Termination For Cause

- a. Each of the following shall constitute an event of default ("Event of Default") under this Agreement:
 - (1) Contractor fails or refuses to perform or observe any term, covenant or condition contained in this Agreement, and such default continues for a period of ten days after written notice from City to Contractor.

- (2) Contractor (A) is generally not paying its debts as they become due, (B) files, or consents by answer or otherwise to the filing against it of, a petition for relief or reorganization or arrangement or any other petition in bankruptcy or for liquidation or to take advantage of any bankruptcy, insolvency or other debtors' relief law of any jurisdiction, (C) makes an assignment for the benefit of its creditors, (D) consents to the appointment of a custodian, receiver, trustee or other officer with similar powers of Contractor or of any substantial part of Contractor's property or (E) takes action for the purpose of any of the foregoing.
 - (3) A court or government authority enters an order (A) appointing a custodian, receiver, trustee or other officer with similar powers with respect to Contractor or with respect to any substantial part of Contractor's property, (B) constituting an order for relief or approving a petition for relief or reorganization or arrangement or any other petition in bankruptcy or for liquidation or to take advantage of any bankruptcy, insolvency or other debtors' relief law of any jurisdiction or (C) ordering the dissolution, winding-up or liquidation of Contractor.
- b. On and after any Event of Default, City shall have the right to exercise its legal and equitable remedies, including, without limitation, the right to terminate this Agreement or to seek specific performance of all or any part of this Agreement. In addition, City shall have the right (but no obligation) to cure (or cause to be cured) on behalf of Contractor any Event of Default; Contractor shall pay to City on demand all costs and expenses incurred by City in effecting such cure, with interest thereon from the date of incurrence at the maximum rate then permitted by law. City shall have the right to offset from any amounts due to Contractor under this Agreement or any other agreement between City and Contractor all damages, losses, costs or expenses incurred by City as a result of such Event of Default and any liquidated damages due from Contractor pursuant to the terms of this Agreement or any other agreement.
 - c. All remedies provided for in this Agreement may be exercised individually or in combination with any other remedy available hereunder or under applicable laws, rules and regulations. The exercise of any remedy shall not preclude or in any way be deemed to waive any other remedy.

20. Termination For Convenience

- a. City shall have the option, in its sole discretion, to terminate this Agreement, at any time during the term hereof, for convenience and without cause. City shall exercise this option by giving Contractor written notice of termination. The notice shall specify the date on which termination shall become effective.
- b. Upon receipt of the notice, Contractor shall commence and perform, with diligence, all actions necessary on the part of Contractor to effect the termination of this Agreement on the date specified by City and to minimize the liability of Contractor and City to third parties as a result of termination. All such actions shall be subject to the prior approval of City. Such actions shall include, without limitation:
 - (1) Halting the performance of all services and other work under this Agreement on the date(s) and in the manner specified by City.
 - (2) Not placing any further orders or subcontracts for materials, services, equipment or other items.
 - (3) Terminating all existing orders and subcontracts.
 - (4) At City's direction, assigning to City any or all of Contractor's right, title, and interest under the orders and subcontracts terminated. Upon such assignment, City shall have the right, in its sole discretion, to settle or pay any or all claims arising out of the termination of such orders and subcontracts.

- (5) Subject to City's approval, settling all outstanding liabilities and all claims arising out of the termination of orders and subcontracts.
 - (6) Completing performance of any services or work that City designates to be completed prior to the date of termination specified by City.
 - (7) Taking such action as may be necessary, or as the City may direct, for the protection and preservation of any property related to this Agreement which is in the possession of Contractor and in which City has or may acquire an interest.
- c. Within 30 days after the specified termination date, Contractor shall submit to City an invoice, which shall set forth each of the following as a separate line item:
- (1) The reasonable cost to Contractor, without profit, for all services and other work City directed Contractor to perform prior to the specified termination date, for which services or work City has not already tendered payment. Reasonable costs may include a reasonable allowance for actual overhead, not to exceed a total of 10% of Contractor's direct costs for services or other work. Any overhead allowance shall be separately itemized. Contractor may also recover the reasonable cost of preparing the invoice.
 - (2) A reasonable allowance for profit on the cost of the services and other work described in the immediately preceding subsection (1), provided that Contractor can establish, to the satisfaction of City, that Contractor would have made a profit had all services and other work under this Agreement been completed, and provided further, that the profit allowed shall in no event exceed 5% of such cost.
 - (3) The reasonable cost to Contractor of handling material or equipment returned to the vendor, delivered to the City or otherwise disposed of as directed by the City.
 - (4) A deduction for the cost of materials to be retained by Contractor, amounts realized from the sale of materials and not otherwise recovered by or credited to City, and any other appropriate credits to City against the cost of the services or other work.
- d. In no event shall City be liable for costs incurred by Contractor or any of its subcontractors after the termination date specified by City, except for those costs specifically enumerated and described in the immediately preceding subsection (c). Such non-recoverable costs include, but are not limited to, anticipated profits on this Agreement, post-termination employee salaries, post-termination administrative expenses, post-termination overhead or unabsorbed overhead, attorneys' fees or other costs relating to the prosecution of a claim or lawsuit, prejudgment interest, or any other expense which is not reasonable or authorized under such subsection (c).
- e. In arriving at the amount due to Contractor under this Section, City may deduct: (1) all payments previously made by City for work or other services covered by Contractor's final invoice; (2) any claim which City may have against Contractor in connection with this Agreement; (3) any invoiced costs or expenses excluded pursuant to the immediately preceding subsection (d); and (4) in instances in which, in the opinion of the City, the cost of any service or other work performed under this Agreement is excessively high due to costs incurred to remedy or replace defective or rejected services or other work, the difference between the invoiced amount and City's estimate of the reasonable cost of performing the invoiced services or other work in compliance with the requirements of this Agreement.
- f. City's payment obligation under this Section shall survive termination of this Agreement.

21. Rights and Duties Upon Termination or Expiration

Subject to the immediately preceding subsection (a), upon termination of this Agreement prior to expiration of the term specified in Section 2, this Agreement shall terminate and be of no further force or effect. Contractor shall transfer title to City, and deliver in the manner, at the times, and to the extent, if any, directed by City, any work in progress, completed work, supplies, equipment, and other materials produced as a part of, or acquired in connection with the performance of this Agreement, and any completed or partially completed work which, if this Agreement had been completed, would have been required to be furnished to City. This subsection shall survive termination of this Agreement.

22. Conflict of Interest

Through its execution of this Agreement, Contractor acknowledges that it is familiar with the provisions of §15.103 and Appendix C 8.105 of City's Charter and §87100 et seq. of the Government Code of the State of California, and certifies that it does not know of any facts which constitute a violation of such provisions.

23. Proprietary or Confidential Information of City

Contractor understands and agrees that, in the performance of the work or services under this Agreement or in contemplation thereof, Contractor may have access to private or confidential information which may be owned or controlled by City and that such information may contain proprietary or confidential details, the disclosure of which to third parties may be damaging to City. Contractor agrees that all information disclosed by City to Contractor shall be held in confidence and used only in performance of the Agreement. Contractor shall exercise the same standard of care to protect such information as a reasonably prudent contractor would use to protect its own proprietary data.

24. Notices to the Parties

All notices to be given by the parties hereto shall be in writing both emailed and by depositing in the United States Post Office, postage prepaid and registered as follows:

To City:

San Francisco Municipal Transportation Agency
Attn: Katherine Kwok, Mechanical Systems Program
425 Geneva Avenue
San Francisco, CA 94112
katherine.kwok@sfmta.com

To Contractor:

Kone Inc.
15021 Wicks Boulevard
San Leandro, Ca 94577

25. Ownership of Results

If, in connection with services performed under this Agreement, Contractor or its subcontractors create artwork, copy, posters, billboards, photographs, videotapes, audiotapes, systems designs, software, reports, diagrams, surveys, blueprints, source codes or any other original works of authorship, such works of authorship shall be works for hire as defined under Title 17 of the United States Code, and all copyrights in such works are the property of the City. If it is ever determined that any works created by Contractor or its subcontractors under this Agreement are not works for hire under U.S. law, Contractor hereby assigns all copyrights to such works to the City, and agrees to provide any material and execute any documents necessary to effectuate such assignment. With the approval of the City, Contractor may retain and use copies of such works for reference and as documentation of its experience and capabilities.

26. Audit and Inspection of Records

Contractor agrees to maintain and make available to City during business hours accurate books and accounting records relative to its activities under this Agreement. Contractor will permit City to audit, examine and make excerpts and transcripts from such books and records, and to make audits of all invoices, materials, payrolls, records or personnel and other data related to all other matters covered by this Agreement, whether funded in whole or in part under this Agreement. Contractor shall maintain such data and records in an accessible location and condition for a period of not less than five years after final payment under this Agreement or until after final audit has been resolved, whichever is later. The State of California or any Federal agency having an interest in the subject of this Agreement shall have the same rights conferred upon City by this Section.

27. Subcontracting

Contractor is prohibited from subcontracting this Agreement or any part of it unless such subcontracting is approved by written instrument executed and approved in the same manner as this Agreement. Neither party shall, on the basis of this Agreement, contract on behalf of or in the name of the other party. Contractor acknowledges and agrees that an independent contractor employed by Contractor to perform work under this Agreement shall be considered a subcontractor for the purposes of this Agreement. An Agreement made in violation of this provision shall confer no rights on any party and shall be null and void.

28. Assignment

The services to be performed by Contractor are personal in character and neither this Agreement nor any duties or obligations hereunder shall be assigned or delegated by Contractor unless approved by written instrument executed and approved in the same manner as this Agreement.

29. Local Business Enterprise and Non-Discrimination in Contracting Ordinance

Contractor shall comply with all applicable provisions of Chapter 14B (LBE Ordinance). Contractor is subject to the enforcement and penalty provisions in Chapter 14B

30. Compliance with South Africa Divestment Ordinance; Liquidated Damages

Not applicable.

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31. MacBride Principles--Northern Ireland

The provisions of San Francisco Administrative Code §12F are incorporated herein by this reference and made part of this Agreement. By signing this Agreement, Contractor confirms that Contractor has read and understood that the City urges companies doing business in Northern Ireland to resolve employment inequities and to abide by the MacBride Principles, and urges San Francisco companies to do business with corporations that abide by the MacBride Principles.

32. Alcohol and Drug-Free Workplace

City reserves the right to deny access to, or require Contractor to remove from, City facilities personnel of any Contractor or subcontractor who City has reasonable grounds to believe has engaged in alcohol abuse or illegal drug activity which in any way impairs City's ability to maintain safe work facilities or to protect the health and well-being of City employees and the general public. City shall have the right of final approval for the entry or re-entry of any such person previously denied access to, or removed from, City facilities. Illegal drug activity means possessing, furnishing, selling, offering, purchasing, using or being under the influence of illegal drugs or other controlled substances for which the individual lacks a valid prescription. Alcohol abuse means possessing, furnishing, selling, offering, or using alcoholic beverages, or being under the influence of alcohol.

33. Non-Waiver of Rights

The omission by either party at any time to enforce any default or right reserved to it, or to require performance of any of the terms, covenants, or provisions hereof by the other party at the time designated, shall not be a waiver of any such default or right to which the party is entitled, nor shall it in any way affect the right of the party to enforce such provisions thereafter.

34. Modification of Agreement

This Agreement may not be modified, nor may compliance with any of its terms waived, except by written instrument executed and approved in the same manner as this Agreement. Contractor shall cooperate with the MTA to submit to the Contract Compliance Director any amendment, modification, supplement or change order that would result in a cumulative increase of the original amount of this Agreement by more than 20%.

35. Administrative Remedy for Agreement Interpretation

Should any question arise as to the meaning and intent of this Agreement, the question shall, prior to any other action or resort to any other legal remedy, be referred to the Director who shall decide the true meaning and intent of the Agreement.

36. Agreement Made in California: Venue

The formation, interpretation and performance of this Agreement shall be governed by the laws of the State of California, excluding its conflict of laws rules. Venue for all litigation relative to the formation, interpretation and performance of this Agreement shall be in San Francisco.

37. Construction

All paragraph captions are for reference only and shall not be considered in construing this Agreement.

38. Entire Agreement

This contract sets forth the entire Agreement between the parties, and supersedes all other oral or

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written provisions. This contract may be modified only as provided in Section 34.

39. Tropical Hardwood and Virgin Redwood Ban

The City and County of San Francisco urges contractors not to import, purchase, obtain, or use for any purpose, any tropical hardwood or tropical hardwood wood product, virgin redwood or virgin redwood wood product.

40. Ownership of Equipment

Any equipment, vehicles, computer programs (software licenses and media), etc., purchased by the Contractor or its subcontractors in connection with services to be performed under this Agreement shall become property of and will be transmitted to the City.

41. Guaranteed Maximum Costs

- a. The City's obligations hereunder shall not at any time exceed the amount certified by the Controller for the purpose and period stated in such certification.
- b. Except as may be provided by laws governing emergency procedures, officers and employees of the City are not authorized to request, and the City is not required to reimburse the Contractor for Commodities or Services beyond the agreed upon contract scope unless the changed scope is authorized by amendment and approved as required by law.
- c. Officers and employees of the City are not authorized to offer or promise, nor is the City required to honor, any offered or promised additional funding in excess of the maximum amount of funding for which the contract is certified without certification of the additional amount by the Controller.
- d. The Controller is not authorized to make payments on any contract for which funds have not been certified as available in the budget or by supplemental appropriation.

42. Sunshine Ordinance

In accordance with San Francisco Administrative Code §67.24(e), Contracts, contractor's bids, responses to requests for proposals and all other records of communications between the department and persons or firms seeking contracts shall be open to inspection immediately after a contract has been awarded. Nothing in this provision requires the disclosure of a private person's or organization's net worth or other proprietary financial data submitted for qualification for a contract or other benefit until and unless that person or organization is awarded the contract or benefit. Information provided which is covered by this subdivision will be made available to the public upon request.

43. Non-Discrimination in City Contracts and Benefits Ordinance

- a. Contractor Shall Not Discriminate. In the performance of this Agreement, Contractor agrees not to discriminate on the basis of the fact or perception of a person's race, color, creed, religion, national origin, ancestry, age, sex, sexual orientation, gender identity, domestic partner status, marital status, disability or Acquired Immune Deficiency Syndrome or HIV status (AIDS/HIV status) against any employee of, any City employee working with, or applicant for employment with Contractor, in any of Contractor's operations within the United States, or against any person seeking accommodations, advantages, facilities, privileges, services, or membership in all business, social, or other establishments or organizations operated by Contractor.
- b. Subcontracts. Contractor shall incorporate by reference in all subcontracts the provisions of Sections 12B.2(a), 12B.2(c)-(k), and 12C.3 of the San Francisco Administrative Code and shall

require all subcontractors to comply with such provisions. Contractor's failure to comply with the obligations in this subsection shall constitute a material breach of this Agreement.

- c. Non-Discrimination in Benefits. Contractor does not as of the date of this Agreement and will not during the term of this Agreement, in any of its operations in San Francisco or where the work is being performed for the City or elsewhere within the United States, discriminate in the provision of bereavement leave, family medical leave, health benefits, membership or membership discounts, moving expenses, pension and retirement benefits or travel benefits, as well as any benefits other than the benefits specified above, between employees with domestic partners and employees with spouses, and/or between the domestic partners and spouses of such employees, where the domestic partnership has been registered with a governmental entity pursuant to state or local law authorizing such registration, subject to the conditions set forth in Section 12B.2(b) of the San Francisco Administrative Code.
- d. Condition to Contract. As a condition to this Agreement, Contractor shall execute the "Chapter 12B Declaration: Nondiscrimination in Contracts and Benefits" form (Form HRC-12B-101) with supporting documentation and secure the approval of the form by the San Francisco Human Rights Commission.
- e. Incorporation of Administrative Code Provisions by Reference. The provisions of Chapters 12B and 12C of the San Francisco Administrative Code are incorporated in this Section by reference and made a part of this Agreement as though fully set forth herein. Contractor shall comply fully with and be bound by all of the provisions that apply to this Agreement under such Chapters of the Administrative Code, including but not limited to the remedies provided in such Chapters. Without limiting the foregoing, Contractor understands that pursuant to Section 12B.2(h) of the San Francisco Administrative Code, a penalty of \$50 for each person for each calendar day during which such person was discriminated against in violation of the provisions of this Agreement may be assessed against Contractor and/or deducted from any payments due Contractor.

44. Submitting False Claims; Monetary Penalties

Any contractor, subcontractor or consultant who commits any of the following acts shall be liable to the City for three times the amount of damages which the City sustains because of the act of that contractor, subcontractor or consultant. A contractor, subcontractor or consultant who commits any of the following acts shall be liable to the City for the costs, including attorney's fees, of a civil action brought to recover any of those penalties or damages, and may be liable to the City for a civil penalty of up to \$10,000 for each false claim: (a) Knowingly presents or causes to be presented to an officer or employee of the City a false claim or request for payment or approval. (b) Knowingly makes, uses, or causes to be made or used a false record or statement to get a false claim paid or approved by the City. (c) Conspires to defraud the City by getting a false claim allowed or paid by the City. (d) Knowingly makes, uses, or causes to be made or used a false record or statement to conceal, avoid, or decrease an obligation to pay or transmit money or property to the City. (e) Is a beneficiary of an inadvertent submission of a false claim to the City, subsequently discovers the falsity of the claim, and fails to disclose the false claim to the City within a reasonable time after discovery of the false claim.

45. Earned Income Credit (EIC) Forms

(a) Contractor shall provide EIC Forms to each Eligible Employee at each of the following times: (i) within thirty (30) days following the date on which this Agreement becomes effective (unless Contractor has already provided such EIC Forms at least once during the calendar year in which such effective date falls); (ii) promptly after any Eligible Employee is hired by Contractor; and (iii) annually between January 1 and January 31 of each calendar year during the term of this Agreement.

(b) Failure to comply with any requirement contained in subparagraph (a) of this Section shall constitute a material breach by Contractor of the terms of this Agreement. If within thirty (30) days after Contractor receives written notice of such a breach, Contractor fails to cure such breach or, if such breach cannot reasonably be cured within such period of thirty (30) days, Contractor fails to commence efforts to cure within such period or thereafter fails to diligently pursue such cure to completion, the City may pursue any rights or remedies available under this Agreement or under applicable law.

(c) Any Subcontract entered into by Contractor shall require the subcontractor to comply, as to the subcontractor's Eligible Employees, with each of the terms of this Section.

(d) Capitalized terms used in this Section and not defined in this Agreement shall have the meanings assigned to such terms in Section 12O of the San Francisco Administrative Code.

46. Minimum Compensation Ordinance

Contractor shall pay covered employees no less than the minimum compensation required by San Francisco Administrative Code Chapter 12P. Contractor is subject to the enforcement and penalty provisions in Chapter 12P. By signing and executing this Agreement, Contractor certifies that it is in compliance with Chapter 12P.

47. Requiring Health Care Accountability Ordinance

Contractor shall comply with San Francisco Administrative Code Chapter 12Q. Contractor shall choose and perform one of the Health Care Accountability options set forth in San Francisco Administrative Code Chapter 12Q.3. Contractor is subject to the enforcement and penalty provisions in Chapter 12Q.

48. Limitations on Contributions

By executing this Agreement, Contractor acknowledges that it is familiar with Section 1.126 of the City's Campaign and Governmental Conduct Code, which prohibits any person who contracts with the City for the rendition of personal services, for the furnishing of any material, supplies or equipment, for the sale or lease of any land or building, or for a grant, loan or loan guarantee, from making any campaign contribution to (1) an individual holding a City elective office if the contract must be approved by the individual, a board on which that individual serves, or the board of a state agency on which an appointee of that individual serves, (2) a candidate for the office held by such individual, or (3) a committee controlled by such individual, at any time from the commencement of negotiations for the contract until the later of either the termination of negotiations for such contract or six months after the date the contract is approved. The prohibition on contributions applies to each prospective party to the contract; each member of Contractor's board of directors; Contractor's chairperson, chief executive officer, chief financial officer and chief operating officer; any person with an ownership interest of more than 20 percent in Contractor; any subcontractor listed in the bid or contract; and any committee that is sponsored or controlled by Contractor. Contractor must inform each such person of the limitation on contributions imposed by Section 1.126 and provide the names of the persons required to be informed to City.

49. Prohibition on Use of Public Funds for Political Activity

In performing the Services, Contractor shall comply with San Francisco Administrative Code Chapter 12G, which prohibits funds appropriated by the City for this Agreement from being expended to participate in, support, or attempt to influence any political campaign for a candidate or for a ballot measure. Contractor is subject to the enforcement and penalty provisions in Chapter 12G.

50. Resource Conservation

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Chapter 5 of the San Francisco Environment Code ("Resource Conservation") is incorporated herein by reference. Failure by Contractor to comply with any of the applicable requirements of Chapter 5 will be deemed a material breach of contract.

51. Compliance with Americans with Disabilities Act

Contractor shall provide the Services in a manner that complies with the Americans with Disabilities Act (ADA), including but not limited to Title II's program access requirements, and all other applicable federal, state and local disability rights legislation.

52. Preservative-treated Wood Containing Arsenic

As of July 1, 2003, Contractor may not purchase preservative-treated wood products containing arsenic in the performance of this Agreement unless an exemption from the requirements of Chapter 13 of the San Francisco Environment Code is obtained from the Department of the Environment under Section 1304 of the Code. The term "preservative-treated wood containing arsenic" shall mean wood treated with a preservative that contains arsenic, elemental arsenic, or an arsenic copper combination, including, but not limited to, chromated copper arsenate preservative, ammoniacal copper zinc arsenate preservative, or ammoniacal copper arsenate preservative. Contractor may purchase preservative-treated wood products on the list of environmentally preferable alternatives prepared and adopted by the Department of the Environment. This provision does not preclude Contractor from purchasing preservative-treated wood containing arsenic for saltwater immersion. The term "saltwater immersion" shall mean a pressure-treated wood that is used for construction purposes or facilities that are partially or totally immersed in saltwater.

53. Compliance with Laws

Contractor shall keep itself fully informed of the City's Charter, codes, ordinances and regulations of the City and of all state, and federal laws in any manner affecting the performance of this Agreement, and must at all times comply with such local codes, ordinances, and regulations and all applicable laws as they may be amended from time to time.

54. Nondisclosure of Private Information

Contractor agrees to comply fully with and be bound by all of the provisions of Chapter 12M of the San Francisco Administrative Code (the "Nondisclosure of Private Information Ordinance"), including the remedies provided. The provisions of the Nondisclosure of Private Information Ordinance are incorporated herein by reference and made a part of this Agreement as though fully set forth. Capitalized terms used in this Section and not defined in this Agreement shall have the meanings assigned to such terms in the Nondisclosure of Private Information Ordinance. Consistent with the requirements of the Nondisclosure of Private Information Ordinance, Contractor agrees to all of the following:

- (a) Neither Contractor nor any of its Subcontractors shall disclose Private Information obtained from the City in the performance of this Agreement to any other Subcontractor, person, or other entity, unless one of the following is true:
 - (i) The disclosure is authorized by this Agreement;
 - (ii) The Contractor received advance written approval from the Contracting Department to disclose the information; or
 - (iii) The disclosure is required by law or judicial order.

- (b) Any disclosure or use of Private Information authorized by this Agreement shall be in accordance with any conditions or restrictions stated in this Agreement. Any disclosure or use of Private Information authorized by a Contracting Department shall be in accordance with any conditions or restrictions stated in the approval.
- (c) Private Information shall mean any information that: (1) could be used to identify an individual, including without limitation, name, address, social security number, medical information, financial information, date and location of birth, and names of relatives; or (2) the law forbids any person from disclosing.
- (d) Any failure of Contractor to comply with the Nondisclosure of Private Information Ordinance shall be a material breach of this Agreement. In such an event, in addition to any other remedies available to it under equity or law, the City may terminate this Agreement, debar Contractor, or bring a false claim action against Contractor.

55. Graffiti Removal

Graffiti is detrimental to the health, safety and welfare of the community in that it promotes a perception in the community that the laws protecting public and private property can be disregarded with impunity. This perception fosters a sense of disrespect of the law that results in an increase in crime; degrades the community and leads to urban blight; is detrimental to property values, business opportunities and the enjoyment of life; is inconsistent with the City's property maintenance goals and aesthetic standards; and results in additional graffiti and in other properties becoming the target of graffiti unless it is quickly removed from public and private property. Graffiti results in visual pollution and is a public nuisance. Graffiti must be abated as quickly as possible to avoid detrimental impacts on the City and County and its residents, and to prevent the further spread of graffiti.

Contractor shall remove all graffiti from any real property owned or leased by Contractor in the City and County of San Francisco within forty eight (48) hours of the earlier of Contractor's (a) discovery or notification of the graffiti or (b) receipt of notification of the graffiti from the Department of Public Works. This section is not intended to require a Contractor to breach any lease or other agreement that it may have concerning its use of the real property. The term "graffiti" means any inscription, word, figure, marking or design that is affixed, marked, etched, scratched, drawn or painted on any building, structure, fixture or other improvement, whether permanent or temporary, including by way of example only and without limitation, signs, banners, billboards and fencing surrounding construction sites, whether public or private, without the consent of the owner of the property or the owner's authorized agent, and which is visible from the public right-of-way. "Graffiti" shall not include: (1) any sign or banner that is authorized by, and in compliance with, the applicable requirements of the San Francisco Public Works Code, the San Francisco Planning Code or the San Francisco Building Code; or (2) any mural or other painting or marking on the property that is protected as a work of fine art under the California Art Preservation Act (California Civil Code Sections 987 et seq.) or as a work of visual art under the Federal Visual Artists Rights Act of 1990 (17 U.S.C. §§ 101 et seq.).

Any failure of Contractor to comply with this section of this Agreement shall constitute an Event of Default of this Agreement.

56. Force Majeure

Under no circumstances shall Contractor be liable for any loss, damage or delay due to any cause beyond its reasonable control, including but not limited to acts of government, strikes, lockouts, labor disputes, fire, explosion, theft, weather damage, flood, earthquake, riot, civil commotion, war, malicious mischief or act of God.

57. Alcohol and Drug-Free Workplace

City reserves the right to deny access to, or require Contractor to remove from, City facilities personnel of any Contractor or subcontractor who City has reasonable grounds to believe has engaged in alcohol abuse or illegal drug activity which in any way impairs City's ability to maintain safe work facilities or to protect the health and well-being of City employees and the general public. City shall have the right of final approval for the entry or re-entry of any such person previously denied access to, or removed from, City facilities. Illegal drug activity means possessing, furnishing, selling, offering, purchasing, using or being under the influence of illegal drugs or other controlled substances for which the individual lacks a valid prescription. Alcohol abuse means possessing, furnishing, selling, offering, or using alcoholic beverages, or being under the influence of alcohol.

58. Sugar-Sweetened Beverage Prohibition

Contractor agrees that it will not sell, provide, or otherwise distribute Sugar-Sweetened Beverages, as defined by San Francisco Administrative Code Chapter 101, as part of its performance of this Agreement.

59. Tropical Hardwood and Virgin Redwood Ban

Pursuant to San Francisco Environment Code Section 804(b), the City urges Contractor not to import, purchase, obtain, or use for any purpose, any tropical hardwood, tropical hardwood wood product, virgin redwood or virgin redwood wood product.

Contractor shall comply with San Francisco Environment Code Chapter 8, which provides that except as expressly permitted by the application of Sections 802(b) and 803(b) of the San Francisco Environment Code, Contractor shall not provide any items to the City in performance of this contract which are tropical hardwoods, tropical hardwood wood products, virgin redwood or virgin redwood wood products. Contractor is subject to the penalty and enforcement provisions of Chapter 8.

60. Preservative Treated Wood Products

Contractor shall comply with the provisions of San Francisco Environment Code Chapter 13, which requires that each Contractor purchasing preservative-treated wood products on behalf of the City, shall only purchase such products from the list of alternatives adopted by the Department of the Environment pursuant to Section 1302 of Chapter 13, unless otherwise granted an exemption by the terms of that Chapter.

61. Large Vehicle Driver Safety Training Requirements

Contractor agrees that before any of its employees and subcontractors drive large vehicles within the City and County of San Francisco, those employees and subcontractors shall successfully complete either (a) the SFMTA's Large Vehicle Urban Driving Safety training program or (b) a training program that meets the SFMTA's approved standards for large vehicle urban driving safety. The SFMTA's approved standards for large vehicle urban driving safety is available for download at www.SFMTA.com/largevehicletestingstandards. This requirement does not apply to drivers providing delivery services who are not employees or subcontractors of the Contractor. For purposes of this section, "large vehicle" means any single vehicle or combination of vehicle and trailer with an unladen weight of 10,000 pounds or more, or a van designed to carry 10 or more people.

By entering into this Agreement, Contractor agrees that in the event the Contractor fails to comply

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with the Large Vehicle Driver Safety Training Requirements, the City will suffer actual damages that will be impractical or extremely difficult to determine; further, Contractor agrees that the sum of up to One Thousand Dollars (\$1,000) per employee or subcontractor who is permitted to drive a large vehicle in violation of these requirements is not a penalty, but is a reasonable estimate of the loss that City will incur based on the Contractor's failure to comply with this requirement, established in light of the circumstances existing at the time this Contract was awarded. City may deduct a sum representing the liquidated damages from any money due to Contractor. Such deductions shall not be considered a penalty, but rather agreed monetary damages sustained by City because of Contractor's failure to comply.

62. Severability

Should the application of any provision of this Agreement to any particular facts or circumstances be found by a court of competent jurisdiction to be invalid or unenforceable, then (a) the validity of other provisions of this Agreement shall not be affected or impaired thereby, and (b) such provision shall be enforced to the maximum extent possible so as to effect the intent of the parties and shall be reformed without further action by the parties to the extent necessary to make such provision valid and enforceable.

63. Cooperative Drafting

This Agreement has been drafted through a cooperative effort of City and Contractor, and both Parties have had an opportunity to have the Agreement reviewed and revised by legal counsel. No Party shall be considered the drafter of this Agreement, and no presumption or rule that an ambiguity shall be construed against the Party drafting the clause shall apply to the interpretation or enforcement of this Agreement.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the day first mentioned above.

<p>CITY</p> <p>San Francisco Municipal Transportation Agency</p> <hr/> <p>Edward D. Reiskin Director of Transportation</p> <p>AUTHORIZED BY:</p> <p>MUNICIPAL TRANSPORTATION AGENCY BOARD OF DIRECTORS</p> <p>Resolution No: _____</p> <p>Adopted: _____</p> <p>Attest: _____ Roberta Boomer, Secretary</p> <p>Approved as to Form:</p> <p>Dennis J. Herrera City Attorney</p> <p>By: _____ John I. Kennedy Deputy City Attorney</p>	<p>CONTRACTOR</p> <p>Kone Inc.</p> <hr/> <p>15021 Wicks Boulevard San Leandro, Ca 94577</p> <p>By signing this Agreement, I have read and understood Sec. 31, the city's statement urging companies doing business in Northern Ireland to move towards resolving employment inequities, encouraging compliance with the MacBride Principles, and urging San Francisco companies to do business with corporations that abide by the MacBride Principles.</p> <p>City vendor number: 12764</p>
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APPENDIX A

SCOPE OF SERVICES AND STANDARDS OF PERFORMANCE
UNDER MASTER AGREEMENT FOR SPECIAL SERVICES
FOR THE INSPECTION, MAINTENANCE AND REPAIR OF ELEVATOR AND ESCALATOR

Bidding Packages shall be issued for each facility or facilities to be serviced. Each Bidding Package shall include specific terms and conditions in the specifications for the Contract Service Order (CSO) award that shall be used in lieu of the Scope of Services and Standards of Performance in Appendix A. No terms and conditions in the Bidding Package are intended to conflict with the terms and conditions of the Master Agreement For Special Services; however, if a conflict exists, the terms and conditions of the Master Agreement For Special Services shall govern. In the event that a Bidding Package is not issued for a bid quotation, the terms and conditions in the Scope of Services and Standards of Performance in Appendix A shall be used.

1. SCOPE OF WORK

The scope of work shall include the furnishing of all labor, materials, equipment and services necessary for and incidental to the full service maintenance of elevators and escalators at various locations within the City & County of San Francisco.

NOTE: Contractor will be responsible for all permits, fees, building inspections and other requirements in connection with the execution of the above scope of work. If additional work not related to the above scope of work is required the contractor shall notify the contract manager in writing of any discrepancies and submit a written proposal if work can be performed by contractor. Contractor will comply with all Federal, State and local environmental regulations and follow outlined procedures.

2. NOTICE OF START OF WORK

The Contractor shall notify Katherine Kwok at (415) 646-2448 at least five (5) days prior to starting work.

3. SCHEDULING

The areas are presently occupied and the contractor shall arrange a schedule with Scott Broder, Elevator/Escalator Inspector at (415) 509-6929.

4. TIME ALLOWED FOR COMPLETION

Time allowed for full performance of the Contract Service Order referenced by this document is 30 working days from award and orders to begin performance which will be issued by Katherine Kwok at (415) 646-2448.

5. COMPLETION OF WORK

All work shall be completed in a manner satisfactory to the Elevator/Escalator Inspector within 30 days of award of a Contract Service Order.

6. OBTAINING PLANS AND SPECIFICATIONS

Plans and specifications are available at 425 Geneva Ave, San Francisco, Ca 94112. To obtain a copy of plans and specifications contact Katherine Kwok at (415) 646-2448.

7. INSPECTION OF THE SITE

The Contractor shall inspect the location of the work and familiarize himself or herself with the conditions under which the work shall be performed, and verify that all conditions, dimensions and specifications are as indicated on the drawings prior to submittal of bid. Do not proceed with affected work until any variations or discrepancies are resolved by Scott Broder at (415) 509-6929.

8. PROTECTION OF PROPERTY

Keep construction area broom clean. All work shall be done in neat, clean and professional manner. Protect from damage all materials, construction, utilities and other items and appurtenances not scheduled for demolition. Any damage that should occur shall be repaired as incidental work under the contract at no additional cost to the City.

9. DEBRIS

All dirt, rubbish and debris caused by the work shall be hauled away by the contractor. Premises will be left in a clean and orderly condition at the completion of each days work.

10. LABOR STANDARDS

Contractor shall comply with the mandate under San Francisco Charter section A7.204 and Administrative section 6.22(E) and shall pay its workers performing work under this Agreement the prevailing wage for the craft or crafts required to complete the work. The Board of Supervisors determines the prevailing wage rates and such wage rates are available at the San Francisco Office of Labor Standards Enforcement ("OLSE") or through the California Department of Industrial Relations. In the event that Contractor employs a subcontractor to perform work under this Agreement, Contractor shall require its subcontractor(s) likewise comply with the prevailing wage requirements.

The Contractor shall keep for a period of four years from the date of performance of any CSO, payrolls and basic records including time cards, trust fund forms, apprenticeship agreements, accounting ledgers, tax forms and superintendent and foreman daily logs for all trades workers performing work under this Agreement. Such records shall include the name, address and social security number of each worker who worked under a CSO, including apprentices, his/her classification, a general description of the work each worker performed each day, the rate of pay (including fringe benefits), daily and weekly number of hours worked, deductions made and actual wages paid. The Contractor shall require its subcontractors, if any, to maintain the same records.

The Contractor shall maintain weekly certified payroll records for submission to the awarding department as required. The Contractor shall be responsible for the submission of payroll records of its subcontractors, if any.

All payroll and related records described in the foregoing paragraphs shall at all times be open to inspection and examination of the duly authorized officers and agents of the City and County of San Francisco, including representatives of the Office of Labor Standards Enforcement.

The Contractor further acknowledges and agrees that it shall comply with the City's labor standards enforcement procedures as follows:

1. Contractor shall cooperate fully with the Labor Standards Enforcement Officer and other City employees and agents authorized to assist in the administration and

enforcement of the prevailing wage and other labor standards requirements;

2. The Labor Standards Enforcement Officer and his or her designees, in the performance of his/her duties, shall have the right to engage in random inspections of job sites and to have access to the employees of the contractor, employee time sheets, inspection logs, payroll records and employee paychecks;
3. Contractor shall maintain a sign-in and sign-out sheet showing which employees are present on the job site;
4. Contractor shall prominently post at each job-site a sign informing employees that the work is subject to the City's prevailing wage requirements with reference to the Office of Labor Standards Enforcement;
5. The Office of Labor Standards Enforcement may audit such records of the contractor as he or she reasonably deems necessary to determine compliance with the prevailing wage and other labor standards imposed by the City Charter and the Administrative Code.

Failure to comply with the labor standards provisions of this Agreement may result in a forfeiture of penalties and back wages under Administrative Code section 6.22(E)(8).

11. DEMOLITION

Demolition is not limited to what is shown on the drawings. The intent of the drawings is to indicate the general scope of the work required. Notify Katherine Kwok at (415) 646-2448 of any discrepancies.

12. MATERIALS

All work and materials shall be new unless otherwise noted.

13. ASBESTOS

If during the course of the work performed it is discovered that there is a potential for disturbing asbestos containing material, work must be suspended immediately until it is determined that it is safe to proceed and/or adequate control measures have been established.

14. ASBESTOS INFORMATION

Attached hereto and incorporated by reference as though fully set forth herein.

15. INSTALLATION

The contractor shall furnish all labor, equipment and materials to provide for the installation of the following:

- A. Repair & maintenance of City owned elevators and escalators at various locations.

16. STANDARDS

All work to comply with Title 21 and Title 24 of the CAC and to conform with Federal ADA (Americans with Disabilities Act) Standards.

APPENDIX B

SCHEDULE OF VALUES

Billing Rates shall be based on the bid quotations awarded for each Contract Service Order (CSO).

CITY AND COUNTY OF SAN FRANCISCO
MUNICIPAL TRANSPORTATION AGENCY

(SFMTA-2017-41)

**MASTER AGREEMENT FOR SPECIAL SERVICES
UNDER SAN FRANCISCO ADMINISTRATIVE CODE §6.65**

AGREEMENT BETWEEN THE CITY AND COUNTY OF SAN FRANCISCO AND
SCHINDLER ELEVATOR CORPORATION

This Agreement is made this ____ day of September 2017, in the City and County of San Francisco, State of California, by and between:

Schindler Elevator Corporation
555 McCormick Street
San Leandro, Ca 94577-1107

hereinafter referred to as "Contractor," and City and County of San Francisco, a municipal corporation, hereinafter referred to as "City," acting by and through its Municipal Transportation Agency, hereinafter referred to as the "MTA."

Recitals

WHEREAS, the Municipal Transportation Agency wishes to inspect, maintain, and repair elevator and escalator equipment on an if- and as-needed basis at various MTA-owned and/or operated facilities in accordance with the provisions specified in the San Francisco Administrative Code Section 6.65; and,

WHEREAS, Contractor understands that the continuous, safe operation of elevator and escalator equipment is imperative to the MTA in order for the agency to provide transit services to its passengers; and,

WHEREAS, Contractor understands that any delay in repairing MTA-owned elevator and escalator equipment may subject the MTA to possible fines, breach of its legal obligations to provide accessible access, and monetary penalties; and,

WHEREAS, Contractor understands that time is of the essence in repairing MTA-owned elevator and escalator equipment in order to avoid any delay in the operation of MTA-owned elevator and escalator equipment; and,

WHEREAS, Contractor represents and warrants that it is qualified and has the special expertise and experience to perform the services required for City as set forth under this contract; and,

WHEREAS, approval for said Agreement was obtained from the Civil Service Commission by Resolution No. PSC #Not Applicable dated Not Applicable

Now, THEREFORE, the parties agree as follows:

1. Definitions

Where any word or phrase defined below, or a pronoun used in place thereof, is used in any part of this Agreement and Specifications, it shall have the meaning herein set forth.

AUTHORIZATION: Contract Order of the City and County of San Francisco properly executed by the Director of Transportation and certified by the Controller for the specific funding of this Agreement or any modification thereof.

CITY: City and County of San Francisco, a municipal corporation.

CONTRACTOR: Schindler Elevator Corporation

CONTROLLER: Controller of the City and County of San Francisco.

DIRECTOR: Director of Transportation of the City and County of San Francisco.

WORK: The work to be done in providing the services as described and specific in Appendix A, Appendix B, and any Contract Service Order(s) (CSO) issued under this Agreement.

Whenever the words "as directed", "as required", "as permitted", or words of like effect are used, it shall be understood as the direction, requirement, or permission of the MTA. The words "sufficient", "necessary", or "proper", and the like, mean sufficient, necessary or proper in the judgment of the MTA. The words "approval", "acceptable", "satisfactory", or words of like import, shall mean approved by, or acceptable to, or satisfactory to the Department of MTA, unless otherwise indicated by the context.

2. Certification of Funds; Budget and Fiscal Provisions; Termination in the Event of Non-Appropriation

This Agreement is subject to the budget and fiscal provisions of the City Charter. Charges will accrue only after prior written authorization certified by the Controller, and the amount of City's obligation hereunder shall not at any time exceed the amount certified for the purpose and period stated in such advance authorization.

This Agreement will terminate without penalty, liability or expense of any kind to City at the end of any fiscal year in the event funds are not appropriated for the next succeeding fiscal year. If funds are appropriated for a portion of the fiscal year, this Agreement will terminate, without penalty, liability or expense of any kind at the end of the term for which funds are appropriated.

City has no obligation to make appropriations for this Agreement in lieu of appropriations for new or other agreements. City budget decisions are subject to the discretion of the Mayor and the Board of Supervisors. Contractor's assumption of risk of possible non-appropriation is part of the consideration for this Agreement.

THIS SECTION CONTROLS AGAINST ANY AND ALL OTHER PROVISIONS OF THIS AGREEMENT.

3. Term of the Agreement

Subject to Section 2, the term of this Agreement shall be from September 15, 2017 through September 14, 2022.

4. Effective Date of Agreement

This Agreement shall become effective when the Controller has certified to the availability of funds and Contractor has been notified in writing.

5. Services Contractor Agrees to Perform

The Contractor agrees to perform the basic services at the standards provided for in **Appendix A**, "Services and Standards of Performance under Master Agreement For Special Services For Elevator and Escalator," attached hereto and incorporated by reference as though fully set forth herein.

Contractor acknowledges and agrees that this Agreement does not guarantee Contractor any work. For the performance of most specific tasks, the Department, at its sole discretion, shall seek price quotations from at least three special service providers with Master Agreements. The Department shall issue a Contract Service Order ("CSO") for the work to the provider submitting the lowest quotation. In the event that the Department is unable to obtain three quotations, the Director shall base the issuance of the CSO on the quote or quotes received. The Department reserves the right to reject any and all quotes for any reason or no reason. The Director may accept other than the lowest quotation if, in his/her discretion, the public interest would best be served.

The Contractor acknowledges and agrees that once the Department issues a CSO under this Agreement, the scope of work and price as set forth in the CSO shall be binding on Contractor as though fully incorporated into this Agreement.

6. Compensation

Compensation shall be made in monthly payments on or before the 30th day of each month for work, as set forth in Section 5 of this Agreement, that the Director, in his or her sole discretion, concludes has been performed as of the 30th day of the immediately preceding month. In no event shall the amount of this contract exceed five million dollars **\$5,000,000**.

No charges shall be incurred under this Agreement nor shall any payments become due to Contractor until reports, services, or both, required under this Agreement are received from Contractor and approved by the MTA as being in accordance with this Agreement.

In no event shall City be liable for interest or late charges for any late payments.

7. Method of Payment

Invoices furnished by Contractor under this Agreement must be in a form acceptable to Director and Controller. All amounts paid by City to Contractor shall be subject to audit by City.

Payment shall be made by City to Contractor at the address stated hereinabove.

8. Disallowance

In the event Contractor claims or receives payment from City for a service, reimbursement for which is later disallowed by City or State of California or United States Government, Contractor shall promptly refund the disallowed amount to City upon City's request. At its option, City may offset the amount disallowed from any payment due or to become due to Contractor under this Agreement or any other Agreement.

9. Taxes

Payment of any taxes, including California Sales and Use Taxes, levied upon this Agreement, the transaction, or the services delivered pursuant hereto, shall be the obligation of Contractor. Contractor recognizes and understands that this Agreement may create a "possessory interest" for property tax purposes. Generally, such a possessory interest is not created unless the Agreement

entitles the Contractor to possession, occupancy, or use of City property for private gain. If such a possessory interest is created, then the following shall apply:

- a. Contractor, on behalf of itself and any permitted successors and assigns, recognizes and understands that Contractor, and any permitted successors and assigns, may be subject to real property tax assessments on the possessory interest;
- b. Contractor, on behalf of itself and any permitted successors and assigns, recognizes and understands that the creation, extension, renewal, or assignment of this Agreement may result in a "change in ownership" for purposes of real property taxes, and therefore may result in a revaluation of any possessory interest created by this Agreement. Contractor accordingly agrees on behalf of itself and its permitted successors and assigns to report on behalf of the City to the County Assessor the information required by Revenue and Taxation Code section 480.5, as amended from time to time, and any successor provision.
- c. Contractor, on behalf of itself and any permitted successors and assigns, recognizes and understands that other events also may cause a change of ownership of the possessory interest and result in the revaluation of the possessory interest. (see, e.g., Rev. & Tax. Code section 64, as amended from time to time). Contractor accordingly agrees on behalf of itself and its permitted successors and assigns to report any change in ownership to the County Assessor, the State Board of Equalization or other public agency as required by law.
- d. Contractor further agrees to provide such other information as may be requested by the City to enable the City to comply with any reporting requirements for possessory interests that are imposed by applicable law.

10. Payment Does Not Imply Acceptance of Work

The granting of any progress payment by City, or the receipt thereof by Contractor, shall in no way lessen the liability of Contractor to replace unsatisfactory work or material although the unsatisfactory character of such work or material may not have been apparent or detected at the time such payment was made. Materials, components, or workmanship which do not conform to the Specifications will be rejected and shall be replaced by Contractor without delay.

11. Qualified Personnel

Work under this Agreement shall be performed only by competent personnel under the supervision of and in the employment of Contractor. Contractor will conform with City's reasonable requests regarding assignment of personnel, but all personnel, including those assigned at City's request, shall be supervised by Contractor. Contractor shall commit adequate resources to complete the project within the project schedule specified in this Agreement.

12. Responsibility for Equipment

City shall not be responsible for any damage to persons or property as a result of the use, misuse or failure of any equipment used by Contractor, or by any of its employees, even though such equipment be furnished, rented or loaned to Contractor by City. The acceptance or use of such equipment by Contractor or any of its employees shall be construed to mean that Contractor accepts full responsibility for and agrees to exonerate, indemnify, defend and save harmless City from and against any and all claims for any damage or injury of any type arising from the use, misuse or failure of such equipment, whether such damage be to the contractor, its employees, City employees or third parties, or to property belonging to any of the above.

13. Independent Contractor

Contractor shall be deemed at all times to be an independent Contractor and shall be wholly responsible for the manner in which Contractor performs the service required of Contractor by the terms of this Agreement. Contractor shall be liable for the acts and omissions of it, its employees and its agents. Nothing contained herein shall be construed as creating an employment or agency relationship between City and Contractor. Contractor or any agent or employee of Contractor shall not have employee status with City, nor be entitled to participate in any plans, arrangements, or distributions by City pertaining to or in connection with any retirement, health or other benefits that City may offer its employees. Contractor or any agent or employee of Contractor is liable for the acts and omissions of itself, its employees and its agents. Contractor shall be responsible for all obligations and payments, whether imposed by federal, state or local law, including, but not limited to, FICA, income tax withholdings, unemployment compensation, insurance, and other similar responsibilities related to Contractor's performing services and work, or any agent or employee of Contractor providing same. Nothing in this Agreement shall be construed as creating an employment or agency relationship between City and Contractor or any agent or employee of Contractor.

Any terms in this Agreement referring to direction from City shall be construed as providing for direction as to policy and the result of Contractor's work only, and not as to the means by which such a result is obtained. City does not retain the right to control the means or the method by which Contractor performs work under this Agreement.

Should City, in its discretion, or a relevant taxing authority such as the Internal Revenue Service or the State Employment Development Division, or both, determine that Contractor is an employee for purposes of collection of any employment taxes, the amounts payable under this Agreement shall be reduced by amounts equal to both the employee and employer portions of the tax due (and offsetting any credits for amounts already paid by Contractor which can be applied against this liability). City shall then forward those amounts to the relevant taxing authority.

Should a relevant taxing authority determine a liability for past services performed by Contractor for City, upon notification of such fact by City, Contractor shall promptly remit such amount due or arrange with City to have the amount due withheld from future payments to Contractor under this Agreement (again, offsetting any amounts already paid by Contractor which can be applied as a credit against such liability).

A determination of employment status pursuant to the preceding two paragraphs shall be solely for the purposes of the particular tax in question, and for all other purposes of this Agreement, Contractor shall not be considered an employee of City. Notwithstanding the foregoing, should any court, arbitrator, or administrative authority determine that Contractor is an employee for any other purpose, then Contractor agrees to a reduction in City's financial liability so that City's total expenses under this Agreement are not greater than they would have been had the court, arbitrator, or administrative authority determined that Contractor was not an employee.

14A. Performance Bond and Payment (Labor and Materials) Bond for Contracts in Excess of \$25,000

If the contract amount of this agreement is in excess of \$25,000, Contractor shall submit the Performance and Payment bonds to the MTA when the agreement is awarded as follows:

Contractor shall always have bonds in a total amount equal to or greater than the total dollar value of all CSOs for special services performed under this Agreement.

Prior to commencing any work under this Agreement, Contractor shall provide an initial Performance Bond in the amount of not less than fifty percent (50%) of the amount of the agreement as awarded or \$50,000, whichever is lower and a Payment (Labor and Materials) Bond in the amount not less than fifty percent (50%) of the amount of the agreement as awarded or \$50,000, whichever is lower. The Contractor may alternatively provide Performance and Payment bonds covering 100% of the total possible compensation amount under paragraph 6 of this Agreement.

The Contractor shall provide additional bonds in accordance with this Paragraph 14A in increments of not less than \$50,000 when the total amount of contracted construction activity for all CSOs approaches or equals \$50,000.

The City will provide forms for bonding. Sureties shall conform to the standards set forth by the City's Risk Manager under San Francisco Administrative Code section 6.22. No work shall commence without the verification of valid Performance and Payment bonds. The City will require Bonds from the entity named in the Agreement and may not accept Bonds from subcontractors.

14B. Insurance

- a. Without in any way limiting Contractor's liability pursuant to Section 15, "Indemnification and General Liability," of this Agreement, Contractor will maintain in force, during the full term of the Agreement, insurance in the following amounts and coverage:
 - (1) Workers' Compensation, in statutory amounts, with Employers' Liability limits not less than \$1,000,000 each accident; and
 - (2) Commercial General Liability Insurance with limits not less than \$1,000,000 each occurrence Combined Single Limit for Bodily Injury and Property Damage, including Contractual Liability, Personal Injury, Products and Completed Operations; and
 - (3) Commercial Automobile Liability Insurance with not less than \$1,000,000 each occurrence Combined Single Limit for Bodily Injury and Property Damage, including Owned, Non-Owned and Hired auto coverage, as applicable.
 - (4) In the event that the Work requires Contractor to provide architectural or engineering design or consultation, Contractor shall submit to the City proof of professional liability insurance with limits not less than \$1,000,000.00 each claim and in the aggregate with respect to negligent acts, errors or omissions, in an deductible not to exceed \$50,000 each claim.
- b. Commercial General Liability and Commercial Automobile Liability Insurance policies shall be endorsed to provide the following:
 - (1) Name as Additional Insured the City and County of San Francisco, its Officers, Agents, and Employees.
 - (2) That such policies are primary insurance to any other insurance available to the Additional Insured, with respect to any claims arising out of this contract, and that insurance applies separately to each insured against whom claim is made or suit is brought.
- c. All policies shall be endorsed to provide:

Thirty (30) days' advance written notice to City of reduction or nonrenewal of coverages or cancellation of coverages for any reason. Notices shall be sent and emailed to the following:

Katherine Kwok
Contracts Administrator
SFMTA, Mechanical Systems Program
425 Geneva Avenue
San Francisco, California 94112
katherine.kwok@sfmta.com
- d. Should any of the required insurance be provided under a claims-made form, Contractor shall

maintain such coverage continuously throughout the term of this contract and, without lapse, for a period of three years beyond the contract expiration, to the effect that, should occurrences during the contract term give rise to claims made after expiration of the contract, such claims shall be covered by such claims-made policies.

- e. Should any of the required insurance, other than professional liability, be provided under a form of coverage that includes a general annual aggregate limit or provides that claims investigation or legal defense costs be included in such general annual aggregate limit, such general annual aggregate limit shall be double the occurrence or claims limits specified above.
- f. Should any required insurance lapse during the term of this Agreement, requests for payments originating after such lapse shall not be processed until the City receives satisfactory evidence of reinstated coverage as required by this Agreement, effective as of the lapse date. If insurance is not reinstated, the City may, at its sole option, terminate this Agreement effective on the date of such lapse of insurance.
- g. Before commencing any services or operations under this Agreement, Contractor shall furnish to City certificates of insurance and additional insured policy endorsements with insurers with ratings comparable to A-, VIII or higher, that are authorized to do business in the State of California, and that are satisfactory to City, in form evidencing all coverages set forth above. Contractor shall furnish complete copies of policies of any or all of the above-listed insurance policies promptly upon City request. Failure to maintain insurance shall constitute a material breach of this Agreement.
- i. Approval of the insurance by City shall not relieve or decrease the liability of Contractor hereunder.

15. Indemnification

- a. Consistent with California Civil Code section 2782, Contractor shall assume the defense of, indemnify and hold harmless the City, its boards and commissions, , and all of their officers, agents, members, employees, authorized representatives, or any other persons deemed necessary by any of them acting within the scope of the duties entrusted to them, from all claims, suits, actions, losses and liability of every kind, nature and description, directly or indirectly arising out of, connected with or resulting from the performance of the Work. This indemnification shall not be valid in the instance where the loss is caused by the sole negligence or intentional tort of any person indemnified herein.
- b. The City, its boards and commissions, and all of their officers, agents, members, employees, and authorized representatives shall have no liability to Contractor for any type of special, consequential or incidental damages arising out of or connected with Contractor's Work. This limit of liability applies under all circumstances including, but not limited to, the breach, completion termination, suspension, cancellation or recession of the Work or this Contract, negligence or strict liability by the City, its boards and commissions, and their representatives, consultants or agents.
- c. Contractor acknowledges that any claims, demands, losses, damages, costs, expenses, and legal liability that arise out of, result from, or are in any way connected with the release or spill of any legally designated hazardous material or waste or contaminated material as a result of the Work performed under this Contract are expressly within the scope of this indemnity, and that the costs, expenses, and legal liability for environmental investigations, monitoring, containment, removal, repair, cleanup, restoration, remedial work, penalties, and fines arising from the violation of any local, state, or federal law or regulation, disbursements, and other response costs within the scope of this indemnity.

PAGE 39.

- d. On request, Contractor shall defend any action, claim or suit asserting a claim covered by this indemnity. Contractor shall pay all costs that may be incurred by the City and all indemnified.
- e. Contractor's liability shall not be limited to the amount of insurance coverages required under the Contract Documents.
- f. In the event that Contractor and its insurance carrier(s) in bad faith refuse to negotiate and compensate a third party or parties for property damage or personal injuries which arise out of Contractor's performance of the Work, the City shall have the right to estimate the amount of damages and to pay the same, and the amount so paid shall be deducted from the amount due Contractor under this Contract, or an appropriate amount shall be retained by the City until all suits or claims for said damages shall have been settled or otherwise disposed of and satisfactory evidence to that effect shall have been furnished to the City.

16. Incidental and Consequential Damages

Contractor shall be responsible for incidental and consequential damages to the extent caused by Contractor's negligent acts or omissions. Nothing in this Agreement shall constitute a waiver or limitation or any rights with City may have under applicable law.

17. Liability of City

City's obligations under this contract shall be limited to the payment of the compensation provided for in Section 6 of this Agreement. Notwithstanding any other provision of this Agreement, in no event shall City be liable, regardless of whether any claim is based on contract or tort, for Contractor's own special, consequential, indirect or incidental damages, including, but not limited to, lost profits, arising out of or in connection with this Agreement or the services performed in connection with this Agreement.

18. Liquidated Damages

Contractor acknowledges and agrees that time is of the essence in responding to calls for service and repairs, as set forth in Appendix A of this Agreement, and that failure to respond may result in actual damages to the City which would be extremely difficult to or impracticable to determine. Contractor therefore further acknowledges and agrees that Individual service orders may include liquidated damages, not as a penalty, but as a reasonable estimate of the loss the City would incur based on the delay. Such liquidated damages may be set by the City, at its sole discretion, according to the particular circumstance of the service order. The City may deduct a sum representing the liquidated damages from any money due to Contractor.

19. Termination For Cause

- a. Each of the following shall constitute an event of default ("Event of Default") under this Agreement:
 - (1) Contractor fails or refuses to perform or observe any term, covenant or condition contained in this Agreement, and such default continues for a period of ten days after written notice from City to Contractor.

- (2) Contractor (A) is generally not paying its debts as they become due, (B) files, or consents by answer or otherwise to the filing against it of, a petition for relief or reorganization or arrangement or any other petition in bankruptcy or for liquidation or to take advantage of any bankruptcy, insolvency or other debtors' relief law of any jurisdiction, (C) makes an assignment for the benefit of its creditors, (D) consents to the appointment of a custodian, receiver, trustee or other officer with similar powers of Contractor or of any substantial part of Contractor's property or (E) takes action for the purpose of any of the foregoing.
 - (3) A court or government authority enters an order (A) appointing a custodian, receiver, trustee or other officer with similar powers with respect to Contractor or with respect to any substantial part of Contractor's property, (B) constituting an order for relief or approving a petition for relief or reorganization or arrangement or any other petition in bankruptcy or for liquidation or to take advantage of any bankruptcy, insolvency or other debtors' relief law of any jurisdiction or (C) ordering the dissolution, winding-up or liquidation of Contractor.
- b. On and after any Event of Default, City shall have the right to exercise its legal and equitable remedies, including, without limitation, the right to terminate this Agreement or to seek specific performance of all or any part of this Agreement. In addition, City shall have the right (but no obligation) to cure (or cause to be cured) on behalf of Contractor any Event of Default; Contractor shall pay to City on demand all costs and expenses incurred by City in effecting such cure, with interest thereon from the date of incurrence at the maximum rate then permitted by law. City shall have the right to offset from any amounts due to Contractor under this Agreement or any other agreement between City and Contractor all damages, losses, costs or expenses incurred by City as a result of such Event of Default and any liquidated damages due from Contractor pursuant to the terms of this Agreement or any other agreement.
 - c. All remedies provided for in this Agreement may be exercised individually or in combination with any other remedy available hereunder or under applicable laws, rules and regulations. The exercise of any remedy shall not preclude or in any way be deemed to waive any other remedy.

20. Termination For Convenience

- a. City shall have the option, in its sole discretion, to terminate this Agreement, at any time during the term hereof, for convenience and without cause. City shall exercise this option by giving Contractor written notice of termination. The notice shall specify the date on which termination shall become effective.
- b. Upon receipt of the notice, Contractor shall commence and perform, with diligence, all actions necessary on the part of Contractor to effect the termination of this Agreement on the date specified by City and to minimize the liability of Contractor and City to third parties as a result of termination. All such actions shall be subject to the prior approval of City. Such actions shall include, without limitation:
 - (1) Halting the performance of all services and other work under this Agreement on the date(s) and in the manner specified by City.
 - (2) Not placing any further orders or subcontracts for materials, services, equipment or other items.
 - (3) Terminating all existing orders and subcontracts.
 - (4) At City's direction, assigning to City any or all of Contractor's right, title, and interest under the orders and subcontracts terminated. Upon such assignment, City shall have the right, in its sole discretion, to settle or pay any or all claims arising out of the termination of such orders and subcontracts.

- (5) Subject to City's approval, settling all outstanding liabilities and all claims arising out of the termination of orders and subcontracts.
 - (6) Completing performance of any services or work that City designates to be completed prior to the date of termination specified by City.
 - (7) Taking such action as may be necessary, or as the City may direct, for the protection and preservation of any property related to this Agreement which is in the possession of Contractor and in which City has or may acquire an interest.
- c. Within 30 days after the specified termination date, Contractor shall submit to City an invoice, which shall set forth each of the following as a separate line item:
- (1) The reasonable cost to Contractor, without profit, for all services and other work City directed Contractor to perform prior to the specified termination date, for which services or work City has not already tendered payment. Reasonable costs may include a reasonable allowance for actual overhead, not to exceed a total of 10% of Contractor's direct costs for services or other work. Any overhead allowance shall be separately itemized. Contractor may also recover the reasonable cost of preparing the invoice.
 - (2) A reasonable allowance for profit on the cost of the services and other work described in the immediately preceding subsection (1), provided that Contractor can establish, to the satisfaction of City, that Contractor would have made a profit had all services and other work under this Agreement been completed, and provided further, that the profit allowed shall in no event exceed 5% of such cost.
 - (3) The reasonable cost to Contractor of handling material or equipment returned to the vendor, delivered to the City or otherwise disposed of as directed by the City.
 - (4) A deduction for the cost of materials to be retained by Contractor, amounts realized from the sale of materials and not otherwise recovered by or credited to City, and any other appropriate credits to City against the cost of the services or other work.
- d. In no event shall City be liable for costs incurred by Contractor or any of its subcontractors after the termination date specified by City, except for those costs specifically enumerated and described in the immediately preceding subsection (c). Such non-recoverable costs include, but are not limited to, anticipated profits on this Agreement, post-termination employee salaries, post-termination administrative expenses, post-termination overhead or unabsorbed overhead, attorneys' fees or other costs relating to the prosecution of a claim or lawsuit, prejudgment interest, or any other expense which is not reasonable or authorized under such subsection (c).
- e. In arriving at the amount due to Contractor under this Section, City may deduct: (1) all payments previously made by City for work or other services covered by Contractor's final invoice; (2) any claim which City may have against Contractor in connection with this Agreement; (3) any invoiced costs or expenses excluded pursuant to the immediately preceding subsection (d); and (4) in instances in which, in the opinion of the City, the cost of any service or other work performed under this Agreement is excessively high due to costs incurred to remedy or replace defective or rejected services or other work, the difference between the invoiced amount and City's estimate of the reasonable cost of performing the invoiced services or other work in compliance with the requirements of this Agreement.
- f. City's payment obligation under this Section shall survive termination of this Agreement.

21. Rights and Duties Upon Termination or Expiration

Subject to the immediately preceding subsection (a), upon termination of this Agreement prior to expiration of the term specified in Section 2, this Agreement shall terminate and be of no further force or effect. Contractor shall transfer title to City, and deliver in the manner, at the times, and to the extent, if any, directed by City, any work in progress, completed work, supplies, equipment, and other materials produced as a part of, or acquired in connection with the performance of this Agreement, and any completed or partially completed work which, if this Agreement had been completed, would have been required to be furnished to City. This subsection shall survive termination of this Agreement.

22. Conflict of Interest

Through its execution of this Agreement, Contractor acknowledges that it is familiar with the provisions of §15.103 and Appendix C 8.105 of City's Charter and §87100 et seq. of the Government Code of the State of California, and certifies that it does not know of any facts which constitute a violation of such provisions.

23. Proprietary or Confidential Information of City

Contractor understands and agrees that, in the performance of the work or services under this Agreement or in contemplation thereof, Contractor may have access to private or confidential information which may be owned or controlled by City and that such information may contain proprietary or confidential details, the disclosure of which to third parties may be damaging to City. Contractor agrees that all information disclosed by City to Contractor shall be held in confidence and used only in performance of the Agreement. Contractor shall exercise the same standard of care to protect such information as a reasonably prudent contractor would use to protect its own proprietary data.

24. Notices to the Parties

All notices to be given by the parties hereto shall be in writing both emailed and by depositing in the United States Post Office, postage prepaid and registered as follows:

To City:

San Francisco Municipal Transportation Agency
Attn: Katherine Kwok, Mechanical Systems Program
425 Geneva Avenue
San Francisco, CA 94112
katherine.kwok@sfmta.com

To Contractor:

Schindler Elevator Corporation
555 McCormick Street
San Leandro, Ca 94577-1107

25. Ownership of Results

If, in connection with services performed under this Agreement, Contractor or its subcontractors create artwork, copy, posters, billboards, photographs, videotapes, audiotapes, systems designs, software, reports, diagrams, surveys, blueprints, source codes or any other original works of authorship, such works of authorship shall be works for hire as defined under Title 17 of the United States Code, and all copyrights in such works are the property of the City. If it is ever determined that any works created by Contractor or its subcontractors under this Agreement are not works for hire under U.S. law, Contractor hereby assigns all copyrights to such works to the City, and agrees to provide any material and execute any documents necessary to effectuate such assignment. With the approval of the City, Contractor may retain and use copies of such works for reference and as documentation of its experience and capabilities.

26. Audit and Inspection of Records

Contractor agrees to maintain and make available to City during business hours accurate books and accounting records relative to its activities under this Agreement. Contractor will permit City to audit, examine and make excerpts and transcripts from such books and records, and to make audits of all invoices, materials, payrolls, records or personnel and other data related to all other matters covered by this Agreement, whether funded in whole or in part under this Agreement. Contractor shall maintain such data and records in an accessible location and condition for a period of not less than five years after final payment under this Agreement or until after final audit has been resolved, whichever is later. The State of California or any Federal agency having an interest in the subject of this Agreement shall have the same rights conferred upon City by this Section.

27. Subcontracting

Contractor is prohibited from subcontracting this Agreement or any part of it unless such subcontracting is approved by written instrument executed and approved in the same manner as this Agreement. Neither party shall, on the basis of this Agreement, contract on behalf of or in the name of the other party. Contractor acknowledges and agrees that an independent contractor employed by Contractor to perform work under this Agreement shall be considered a subcontractor for the purposes of this Agreement. An Agreement made in violation of this provision shall confer no rights on any party and shall be null and void.

28. Assignment

The services to be performed by Contractor are personal in character and neither this Agreement nor any duties or obligations hereunder shall be assigned or delegated by Contractor unless approved by written instrument executed and approved in the same manner as this Agreement.

29. Local Business Enterprise and Non-Discrimination in Contracting Ordinance

Contractor shall comply with all applicable provisions of Chapter 14B (LBE Ordinance). Contractor is subject to the enforcement and penalty provisions in Chapter 14B

30. Compliance with South Africa Divestment Ordinance; Liquidated Damages

Not applicable.

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31. MacBride Principles--Northern Ireland

The provisions of San Francisco Administrative Code §12F are incorporated herein by this reference and made part of this Agreement. By signing this Agreement, Contractor confirms that Contractor has read and understood that the City urges companies doing business in Northern Ireland to resolve employment inequities and to abide by the MacBride Principles, and urges San Francisco companies to do business with corporations that abide by the MacBride Principles.

32. Alcohol and Drug-Free Workplace

City reserves the right to deny access to, or require Contractor to remove from, City facilities personnel of any Contractor or subcontractor who City has reasonable grounds to believe has engaged in alcohol abuse or illegal drug activity which in any way impairs City's ability to maintain safe work facilities or to protect the health and well-being of City employees and the general public. City shall have the right of final approval for the entry or re-entry of any such person previously denied access to, or removed from, City facilities. Illegal drug activity means possessing, furnishing, selling, offering, purchasing, using or being under the influence of illegal drugs or other controlled substances for which the individual lacks a valid prescription. Alcohol abuse means possessing, furnishing, selling, offering, or using alcoholic beverages, or being under the influence of alcohol.

33. Non-Waiver of Rights

The omission by either party at any time to enforce any default or right reserved to it, or to require performance of any of the terms, covenants, or provisions hereof by the other party at the time designated, shall not be a waiver of any such default or right to which the party is entitled, nor shall it in any way affect the right of the party to enforce such provisions thereafter.

34. Modification of Agreement

This Agreement may not be modified, nor may compliance with any of its terms waived, except by written instrument executed and approved in the same manner as this Agreement. Contractor shall cooperate with the MTA to submit to the Contract Compliance Director any amendment, modification, supplement or change order that would result in a cumulative increase of the original amount of this Agreement by more than 20%.

35. Administrative Remedy for Agreement Interpretation

Should any question arise as to the meaning and intent of this Agreement, the question shall, prior to any other action or resort to any other legal remedy, be referred to the Director who shall decide the true meaning and intent of the Agreement.

36. Agreement Made in California: Venue

The formation, interpretation and performance of this Agreement shall be governed by the laws of the State of California, excluding its conflict of laws rules. Venue for all litigation relative to the formation, interpretation and performance of this Agreement shall be in San Francisco.

37. Construction

All paragraph captions are for reference only and shall not be considered in construing this Agreement.

38. Entire Agreement

This contract sets forth the entire Agreement between the parties, and supersedes all other oral or

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written provisions. This contract may be modified only as provided in Section 34.

39. Tropical Hardwood and Virgin Redwood Ban

The City and County of San Francisco urges contractors not to import, purchase, obtain, or use for any purpose, any tropical hardwood or tropical hardwood wood product, virgin redwood or virgin redwood wood product.

40. Ownership of Equipment

Any equipment, vehicles, computer programs (software licenses and media), etc., purchased by the Contractor or its subcontractors in connection with services to be performed under this Agreement shall become property of and will be transmitted to the City.

41. Guaranteed Maximum Costs

- a. The City's obligations hereunder shall not at any time exceed the amount certified by the Controller for the purpose and period stated in such certification.
- b. Except as may be provided by laws governing emergency procedures, officers and employees of the City are not authorized to request, and the City is not required to reimburse the Contractor for Commodities or Services beyond the agreed upon contract scope unless the changed scope is authorized by amendment and approved as required by law.
- c. Officers and employees of the City are not authorized to offer or promise, nor is the City required to honor, any offered or promised additional funding in excess of the maximum amount of funding for which the contract is certified without certification of the additional amount by the Controller.
- d. The Controller is not authorized to make payments on any contract for which funds have not been certified as available in the budget or by supplemental appropriation.

42. Sunshine Ordinance

In accordance with San Francisco Administrative Code §67.24(e), Contracts, contractor's bids, responses to requests for proposals and all other records of communications between the department and persons or firms seeking contracts shall be open to inspection immediately after a contract has been awarded. Nothing in this provision requires the disclosure of a private person's or organization's net worth or other proprietary financial data submitted for qualification for a contract or other benefit until and unless that person or organization is awarded the contract or benefit. Information provided which is covered by this subdivision will be made available to the public upon request.

43. Non-Discrimination in City Contracts and Benefits Ordinance

- a. Contractor Shall Not Discriminate. In the performance of this Agreement, Contractor agrees not to discriminate on the basis of the fact or perception of a person's race, color, creed, religion, national origin, ancestry, age, sex, sexual orientation, gender identity, domestic partner status, marital status, disability or Acquired Immune Deficiency Syndrome or HIV status (AIDS/HIV status) against any employee of, any City employee working with, or applicant for employment with Contractor, in any of Contractor's operations within the United States, or against any person seeking accommodations, advantages, facilities, privileges, services, or membership in all business, social, or other establishments or organizations operated by Contractor.
- b. Subcontracts. Contractor shall incorporate by reference in all subcontracts the provisions of

Sections 12B.2(a), 12B.2(c)-(k), and 12C.3 of the San Francisco Administrative Code and shall require all subcontractors to comply with such provisions. Contractor's failure to comply with the obligations in this subsection shall constitute a material breach of this Agreement.

- c. Non-Discrimination in Benefits. Contractor does not as of the date of this Agreement and will not during the term of this Agreement, in any of its operations in San Francisco or where the work is being performed for the City or elsewhere within the United States, discriminate in the provision of bereavement leave, family medical leave, health benefits, membership or membership discounts, moving expenses, pension and retirement benefits or travel benefits, as well as any benefits other than the benefits specified above, between employees with domestic partners and employees with spouses, and/or between the domestic partners and spouses of such employees, where the domestic partnership has been registered with a governmental entity pursuant to state or local law authorizing such registration, subject to the conditions set forth in Section 12B.2(b) of the San Francisco Administrative Code.
- d. Condition to Contract. As a condition to this Agreement, Contractor shall execute the "Chapter 12B Declaration: Nondiscrimination in Contracts and Benefits" form (Form HRC-12B-101) with supporting documentation and secure the approval of the form by the San Francisco Human Rights Commission.
- f. Incorporation of Administrative Code Provisions by Reference. The provisions of Chapters 12B and 12C of the San Francisco Administrative Code are incorporated in this Section by reference and made a part of this Agreement as though fully set forth herein. Contractor shall comply fully with and be bound by all of the provisions that apply to this Agreement under such Chapters of the Administrative Code, including but not limited to the remedies provided in such Chapters. Without limiting the foregoing, Contractor understands that pursuant to Section 12B.2(h) of the San Francisco Administrative Code, a penalty of \$50 for each person for each calendar day during which such person was discriminated against in violation of the provisions of this Agreement may be assessed against Contractor and/or deducted from any payments due Contractor.

44. Submitting False Claims; Monetary Penalties

Any contractor, subcontractor or consultant who commits any of the following acts shall be liable to the City for three times the amount of damages which the City sustains because of the act of that contractor, subcontractor or consultant. A contractor, subcontractor or consultant who commits any of the following acts shall be liable to the City for the costs, including attorney's fees, of a civil action brought to recover any of those penalties or damages, and may be liable to the City for a civil penalty of up to \$10,000 for each false claim: (a) Knowingly presents or causes to be presented to an officer or employee of the City a false claim or request for payment or approval. (b) Knowingly makes, uses, or causes to be made or used a false record or statement to get a false claim paid or approved by the City. (c) Conspires to defraud the City by getting a false claim allowed or paid by the City. (d) Knowingly makes, uses, or causes to be made or used a false record or statement to conceal, avoid, or decrease an obligation to pay or transmit money or property to the City. (e) Is a beneficiary of an inadvertent submission of a false claim to the City, subsequently discovers the falsity of the claim, and fails to disclose the false claim to the City within a reasonable time after discovery of the false claim.

45. Earned Income Credit (EIC) Forms

(a) Contractor shall provide EIC Forms to each Eligible Employee at each of the following times: (i) within thirty (30) days following the date on which this Agreement becomes effective (unless Contractor has already provided such EIC Forms at least once during the calendar year in which such effective date falls); (ii) promptly after any Eligible Employee is hired by Contractor; and (iii) annually between January 1 and January 31 of each calendar year during the term of this Agreement.

(b) Failure to comply with any requirement contained in subparagraph (a) of this Section shall constitute a material breach by Contractor of the terms of this Agreement. If within thirty (30) days after Contractor receives written notice of such a breach, Contractor fails to cure such breach or, if such breach cannot reasonably be cured within such period of thirty (30) days, Contractor fails to commence efforts to cure within such period or thereafter fails to diligently pursue such cure to completion, the City may pursue any rights or remedies available under this Agreement or under applicable law.

(c) Any Subcontract entered into by Contractor shall require the subcontractor to comply, as to the subcontractor's Eligible Employees, with each of the terms of this Section.

(d) Capitalized terms used in this Section and not defined in this Agreement shall have the meanings assigned to such terms in Section 12O of the San Francisco Administrative Code.

46. Minimum Compensation Ordinance

Contractor shall pay covered employees no less than the minimum compensation required by San Francisco Administrative Code Chapter 12P. Contractor is subject to the enforcement and penalty provisions in Chapter 12P. By signing and executing this Agreement, Contractor certifies that it is in compliance with Chapter 12P.

47. Requiring Health Care Accountability Ordinance

Contractor shall comply with San Francisco Administrative Code Chapter 12Q. Contractor shall choose and perform one of the Health Care Accountability options set forth in San Francisco Administrative Code Chapter 12Q.3. Contractor is subject to the enforcement and penalty provisions in Chapter 12Q.

48. Limitations on Contributions

By executing this Agreement, Contractor acknowledges that it is familiar with Section 1.126 of the City's Campaign and Governmental Conduct Code, which prohibits any person who contracts with the City for the rendition of personal services, for the furnishing of any material, supplies or equipment, for the sale or lease of any land or building, or for a grant, loan or loan guarantee, from making any campaign contribution to (1) an individual holding a City elective office if the contract must be approved by the individual, a board on which that individual serves, or the board of a state agency on which an appointee of that individual serves, (2) a candidate for the office held by such individual, or (3) a committee controlled by such individual, at any time from the commencement of negotiations for the contract until the later of either the termination of negotiations for such contract or six months after the date the contract is approved. The prohibition on contributions applies to each prospective party to the contract; each member of Contractor's board of directors; Contractor's chairperson, chief executive officer, chief financial officer and chief operating officer; any person with an ownership interest of more than 20 percent in Contractor; any subcontractor listed in the bid or contract; and any committee that is sponsored or controlled by Contractor. Contractor must inform each such person of the limitation on contributions imposed by Section 1.126 and provide the names of the persons required to be informed to City.

49. Prohibition on Use of Public Funds for Political Activity

In performing the Services, Contractor shall comply with San Francisco Administrative Code Chapter 12G, which prohibits funds appropriated by the City for this Agreement from being expended to participate in, support, or attempt to influence any political campaign for a candidate or for a ballot measure. Contractor is subject to the enforcement and penalty provisions in Chapter 12G.

50. Resource Conservation

Chapter 5 of the San Francisco Environment Code ("Resource Conservation") is incorporated herein by reference. Failure by Contractor to comply with any of the applicable requirements of Chapter 5 will be deemed a material breach of contract.

51. Compliance with Americans with Disabilities Act

Contractor shall provide the Services in a manner that complies with the Americans with Disabilities Act (ADA), including but not limited to Title II's program access requirements, and all other applicable federal, state and local disability rights legislation.

52. Preservative-treated Wood Containing Arsenic

As of July 1, 2003, Contractor may not purchase preservative-treated wood products containing arsenic in the performance of this Agreement unless an exemption from the requirements of Chapter 13 of the San Francisco Environment Code is obtained from the Department of the Environment under Section 1304 of the Code. The term "preservative-treated wood containing arsenic" shall mean wood treated with a preservative that contains arsenic, elemental arsenic, or an arsenic copper combination, including, but not limited to, chromated copper arsenate preservative, ammoniacal copper zinc arsenate preservative, or ammoniacal copper arsenate preservative. Contractor may purchase preservative-treated wood products on the list of environmentally preferable alternatives prepared and adopted by the Department of the Environment. This provision does not preclude Contractor from purchasing preservative-treated wood containing arsenic for saltwater immersion. The term "saltwater immersion" shall mean a pressure-treated wood that is used for construction purposes or facilities that are partially or totally immersed in saltwater.

53. Compliance with Laws

Contractor shall keep itself fully informed of the City's Charter, codes, ordinances and regulations of the City and of all state, and federal laws in any manner affecting the performance of this Agreement, and must at all times comply with such local codes, ordinances, and regulations and all applicable laws as they may be amended from time to time.

54. Nondisclosure of Private Information

Contractor agrees to comply fully with and be bound by all of the provisions of Chapter 12M of the San Francisco Administrative Code (the "Nondisclosure of Private Information Ordinance"), including the remedies provided. The provisions of the Nondisclosure of Private Information Ordinance are incorporated herein by reference and made a part of this Agreement as though fully set forth. Capitalized terms used in this Section and not defined in this Agreement shall have the meanings assigned to such terms in the Nondisclosure of Private Information Ordinance. Consistent with the requirements of the Nondisclosure of Private Information Ordinance, Contractor agrees to all of the following:

- (a) Neither Contractor nor any of its Subcontractors shall disclose Private Information obtained from the City in the performance of this Agreement to any other Subcontractor, person, or other entity, unless one of the following is true:
 - (i) The disclosure is authorized by this Agreement;
 - (ii) The Contractor received advance written approval from the Contracting Department to disclose the information; or

- (iii) The disclosure is required by law or judicial order.
- (b) Any disclosure or use of Private Information authorized by this Agreement shall be in accordance with any conditions or restrictions stated in this Agreement. Any disclosure or use of Private Information authorized by a Contracting Department shall be in accordance with any conditions or restrictions stated in the approval.
- (c) Private Information shall mean any information that: (1) could be used to identify an individual, including without limitation, name, address, social security number, medical information, financial information, date and location of birth, and names of relatives; or (2) the law forbids any person from disclosing.
- (e) Any failure of Contractor to comply with the Nondisclosure of Private Information Ordinance shall be a material breach of this Agreement. In such an event, in addition to any other remedies available to it under equity or law, the City may terminate this Agreement, debar Contractor, or bring a false claim action against Contractor.

a. Graffiti Removal

Graffiti is detrimental to the health, safety and welfare of the community in that it promotes a perception in the community that the laws protecting public and private property can be disregarded with impunity. This perception fosters a sense of disrespect of the law that results in an increase in crime; degrades the community and leads to urban blight; is detrimental to property values, business opportunities and the enjoyment of life; is inconsistent with the City's property maintenance goals and aesthetic standards; and results in additional graffiti and in other properties becoming the target of graffiti unless it is quickly removed from public and private property. Graffiti results in visual pollution and is a public nuisance. Graffiti must be abated as quickly as possible to avoid detrimental impacts on the City and County and its residents, and to prevent the further spread of graffiti.

Contractor shall remove all graffiti from any real property owned or leased by Contractor in the City and County of San Francisco within forty eight (48) hours of the earlier of Contractor's (a) discovery or notification of the graffiti or (b) receipt of notification of the graffiti from the Department of Public Works. This section is not intended to require a Contractor to breach any lease or other agreement that it may have concerning its use of the real property. The term "graffiti" means any inscription, word, figure, marking or design that is affixed, marked, etched, scratched, drawn or painted on any building, structure, fixture or other improvement, whether permanent or temporary, including by way of example only and without limitation, signs, banners, billboards and fencing surrounding construction sites, whether public or private, without the consent of the owner of the property or the owner's authorized agent, and which is visible from the public right-of-way. "Graffiti" shall not include: (1) any sign or banner that is authorized by, and in compliance with, the applicable requirements of the San Francisco Public Works Code, the San Francisco Planning Code or the San Francisco Building Code; or (2) any mural or other painting or marking on the property that is protected as a work of fine art under the California Art Preservation Act (California Civil Code Sections 987 et seq.) or as a work of visual art under the Federal Visual Artists Rights Act of 1990 (17 U.S.C. §§ 101 et seq.).

Any failure of Contractor to comply with this section of this Agreement shall constitute an Event of Default of this Agreement.

56. Force Majeure

Under no circumstances shall Contractor be liable for any loss, damage or delay due to any cause beyond its reasonable control, including but not limited to acts of government, strikes, lockouts, labor disputes, fire, explosion, theft, weather damage, flood, earthquake, riot, civil commotion, war,

malicious mischief or act of God.

57. Alcohol and Drug-Free Workplace

City reserves the right to deny access to, or require Contractor to remove from, City facilities personnel of any Contractor or subcontractor who City has reasonable grounds to believe has engaged in alcohol abuse or illegal drug activity which in any way impairs City's ability to maintain safe work facilities or to protect the health and well-being of City employees and the general public. City shall have the right of final approval for the entry or re-entry of any such person previously denied access to, or removed from, City facilities. Illegal drug activity means possessing, furnishing, selling, offering, purchasing, using or being under the influence of illegal drugs or other controlled substances for which the individual lacks a valid prescription. Alcohol abuse means possessing, furnishing, selling, offering, or using alcoholic beverages, or being under the influence of alcohol.

58. Sugar-Sweetened Beverage Prohibition

Contractor agrees that it will not sell, provide, or otherwise distribute Sugar-Sweetened Beverages, as defined by San Francisco Administrative Code Chapter 101, as part of its performance of this Agreement.

59. Tropical Hardwood and Virgin Redwood Ban

Pursuant to San Francisco Environment Code Section 804(b), the City urges Contractor not to import, purchase, obtain, or use for any purpose, any tropical hardwood, tropical hardwood wood product, virgin redwood or virgin redwood wood product.

Contractor shall comply with San Francisco Environment Code Chapter 8, which provides that except as expressly permitted by the application of Sections 802(b) and 803(b) of the San Francisco Environment Code, Contractor shall not provide any items to the City in performance of this contract which are tropical hardwoods, tropical hardwood wood products, virgin redwood or virgin redwood wood products. Contractor is subject to the penalty and enforcement provisions of Chapter 8.

60. Preservative Treated Wood Products

Contractor shall comply with the provisions of San Francisco Environment Code Chapter 13, which requires that each Contractor purchasing preservative-treated wood products on behalf of the City, shall only purchase such products from the list of alternatives adopted by the Department of the Environment pursuant to Section 1302 of Chapter 13, unless otherwise granted an exemption by the terms of that Chapter.

61. Large Vehicle Driver Safety Training Requirements

Contractor agrees that before any of its employees and subcontractors drive large vehicles within the City and County of San Francisco, those employees and subcontractors shall successfully complete either (a) the SFMTA's Large Vehicle Urban Driving Safety training program or (b) a training program that meets the SFMTA's approved standards for large vehicle urban driving safety. The SFMTA's approved standards for large vehicle urban driving safety is available for download at www.SFMTA.com/largevehicletestingstandards. This requirement does not apply to drivers providing delivery services who are not employees or subcontractors of the Contractor. For purposes of this section, "large vehicle" means any single vehicle or combination of vehicle and trailer with an unladen

weight of 10,000 pounds or more, or a van designed to carry 10 or more people.

By entering into this Agreement, Contractor agrees that in the event the Contractor fails to comply with the Large Vehicle Driver Safety Training Requirements, the City will suffer actual damages that will be impractical or extremely difficult to determine; further, Contractor agrees that the sum of up to One Thousand Dollars (\$1,000) per employee or subcontractor who is permitted to drive a large vehicle in violation of these requirements is not a penalty, but is a reasonable estimate of the loss that City will incur based on the Contractor's failure to comply with this requirement, established in light of the circumstances existing at the time this Contract was awarded. City may deduct a sum representing the liquidated damages from any money due to Contractor. Such deductions shall not be considered a penalty, but rather agreed monetary damages sustained by City because of Contractor's failure to comply.

62. Severability

Should the application of any provision of this Agreement to any particular facts or circumstances be found by a court of competent jurisdiction to be invalid or unenforceable, then (a) the validity of other provisions of this Agreement shall not be affected or impaired thereby, and (b) such provision shall be enforced to the maximum extent possible so as to effect the intent of the parties and shall be reformed without further action by the parties to the extent necessary to make such provision valid and enforceable.

63. Cooperative Drafting

This Agreement has been drafted through a cooperative effort of City and Contractor, and both Parties have had an opportunity to have the Agreement reviewed and revised by legal counsel. No Party shall be considered the drafter of this Agreement, and no presumption or rule that an ambiguity shall be construed against the Party drafting the clause shall apply to the interpretation or enforcement of this Agreement.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the day first mentioned above.

<p>CITY</p> <p>San Francisco Municipal Transportation Agency</p> <hr/> <p>Edward D. Reiskin Director of Transportation</p> <p>Approved as to Form:</p> <p>Dennis J. Herrera City Attorney</p> <p>By: _____ John I. Kennedy Deputy City Attorney</p> <p>AUTHORIZED BY:</p> <p>MUNICIPAL TRANSPORTATION AGENCY BOARD OF DIRECTORS</p> <p>Resolution No: _____</p> <p>Adopted: _____</p> <p>Attest: _____ Roberta Boomer, Secretary</p>	<p>CONTRACTOR</p> <p>Schindler Elevator Corporation</p> <hr/> <p>555 McCormick Street San Leandro, Ca 94577-1107</p> <p>By signing this Agreement, I have read and understood Sec. 31, the city's statement urging companies doing business in Northern Ireland to move towards resolving employment inequities, encouraging compliance with the MacBride Principles, and urging San Francisco companies to do business with corporations that abide by the MacBride Principles.</p> <p>City vendor number: 16572</p>
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APPENDIX A

SCOPE OF SERVICES AND STANDARDS OF PERFORMANCE
UNDER MASTER AGREEMENT FOR SPECIAL SERVICES
FOR THE INSPECTION, MAINTENANCE AND REPAIR OF ELEVATOR AND ESCALATOR

Bidding Packages shall be issued for each facility or facilities to be serviced. Each Bidding Package shall include specific terms and conditions in the specifications for the Contract Service Order (CSO) award that shall be used in lieu of the Scope of Services and Standards of Performance in Appendix A. No terms and conditions in the Bidding Package are intended to conflict with the terms and conditions of the Master Agreement For Special Services; however, if a conflict exists, the terms and conditions of the Master Agreement For Special Services shall govern. In the event that a Bidding Package is not issued for a bid quotation, the terms and conditions in the Scope of Services and Standards of Performance in Appendix A shall be used.

1. SCOPE OF WORK

The scope of work shall include the furnishing of all labor, materials, equipment and services necessary for and incidental to the full service maintenance of elevators and escalators at various locations within the City & County of San Francisco.

NOTE: Contractor will be responsible for all permits, fees, building inspections and other requirements in connection with the execution of the above scope of work. If additional work not related to the above scope of work is required the contractor shall notify the contract manager in writing of any discrepancies and submit a written proposal if work can be performed by contractor. Contractor will comply with all Federal, State and local environmental regulations and follow outlined procedures.

2. NOTICE OF START OF WORK

The Contractor shall notify Katherine Kwok at (415) 646-2448 at least five (5) days prior to starting work.

3. SCHEDULING

The areas are presently occupied and the contractor shall arrange a schedule with Scott Broder, Elevator/Escalator Inspector at (415) 509-6929.

4. TIME ALLOWED FOR COMPLETION

Time allowed for full performance of the Contract Service Order referenced by this document is 30 working days from award and orders to begin performance which will be issued by Katherine Kwok at (415) 646-2448.

5. COMPLETION OF WORK

All work shall be completed in a manner satisfactory to the Elevator/Escalator Inspector within 30 days of award of a Contract Service Order.

6. OBTAINING PLANS AND SPECIFICATIONS

Plans and specifications are available at 425 Geneva Ave, San Francisco, Ca 94112. To obtain a copy of plans and specifications contact Katherine Kwok at (415) 646-2448.

7. INSPECTION OF THE SITE

The Contractor shall inspect the location of the work and familiarize himself or herself with the conditions under which the work shall be performed, and verify that all conditions, dimensions and specifications are as indicated on the drawings prior to submittal of bid. Do not proceed with affected work until any variations or discrepancies are resolved by Scott Broder at (415) 509-6929.

8. PROTECTION OF PROPERTY

Keep construction area broom clean. All work shall be done in neat, clean and professional manner. Protect from damage all materials, construction, utilities and other items and appurtenances not scheduled for demolition. Any damage that should occur shall be repaired as incidental work under the contract at no additional cost to the City.

9. DEBRIS

All dirt, rubbish and debris caused by the work shall be hauled away by the contractor. Premises will be left in a clean and orderly condition at the completion of each days work.

10. LABOR STANDARDS

Contractor shall comply with the mandate under San Francisco Charter section A7.204 and Administrative section 6.22(E) and shall pay its workers performing work under this Agreement the prevailing wage for the craft or crafts required to complete the work. The Board of Supervisors determines the prevailing wage rates and such wage rates are available at the San Francisco Office of Labor Standards Enforcement ("OLSE") or through the California Department of Industrial Relations. In the event that Contractor employs a subcontractor to perform work under this Agreement, Contractor shall require its subcontractor(s) likewise comply with the prevailing wage requirements.

The Contractor shall keep for a period of four years from the date of performance of any CSO, payrolls and basic records including time cards, trust fund forms, apprenticeship agreements, accounting ledgers, tax forms and superintendent and foreman daily logs for all trades workers performing work under this Agreement. Such records shall include the name, address and social security number of each worker who worked under a CSO, including apprentices, his/her classification, a general description of the work each worker performed each day, the rate of pay (including fringe benefits), daily and weekly number of hours worked, deductions made and actual wages paid. The Contractor shall require its subcontractors, if any, to maintain the same records.

The Contractor shall maintain weekly certified payroll records for submission to the awarding department as required. The Contractor shall be responsible for the submission of payroll records of its subcontractors, if any.

All payroll and related records described in the foregoing paragraphs shall at all times be open to inspection and examination of the duly authorized officers and agents of the City and County of San Francisco, including representatives of the Office of Labor Standards Enforcement.

The Contractor further acknowledges and agrees that it shall comply with the City's labor standards enforcement procedures as follows:

1. Contractor shall cooperate fully with the Labor Standards Enforcement Officer and other City employees and agents authorized to assist in the administration and

enforcement of the prevailing wage and other labor standards requirements;

2. The Labor Standards Enforcement Officer and his or her designees, in the performance of his/her duties, shall have the right to engage in random inspections of job sites and to have access to the employees of the contractor, employee time sheets, inspection logs, payroll records and employee paychecks;
3. Contractor shall maintain a sign-in and sign-out sheet showing which employees are present on the job site;
4. Contractor shall prominently post at each job-site a sign informing employees that the work is subject to the City's prevailing wage requirements with reference to the Office of Labor Standards Enforcement;
5. The Office of Labor Standards Enforcement may audit such records of the contractor as he or she reasonably deems necessary to determine compliance with the prevailing wage and other labor standards imposed by the City Charter and the Administrative Code.

Failure to comply with the labor standards provisions of this Agreement may result in a forfeiture of penalties and back wages under Administrative Code section 6.22(E)(8).

11. DEMOLITION

Demolition is not limited to what is shown on the drawings. The intent of the drawings is to indicate the general scope of the work required. Notify Katherine Kwok at (415) 646-2448 of any discrepancies.

12. MATERIALS

All work and materials shall be new unless otherwise noted.

13. ASBESTOS

If during the course of the work performed it is discovered that there is a potential for disturbing asbestos containing material, work must be suspended immediately until it is determined that it is safe to proceed and/or adequate control measures have been established.

14. ASBESTOS INFORMATION

Attached hereto and incorporated by reference as though fully set forth herein.

15. INSTALLATION

The contractor shall furnish all labor, equipment and materials to provide for the installation of the following:

- A. Repair & maintenance of City owned elevators and escalators at various locations.

16. STANDARDS

All work to comply with Title 21 and Title 24 of the CAC and to conform with Federal ADA (Americans with Disabilities Act) Standards.

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APPENDIX B

SCHEDULE OF VALUES

Billing Rates shall be based on the bid quotations awarded for each Contract Service Order (CSO).

CITY AND COUNTY OF SAN FRANCISCO
MUNICIPAL TRANSPORTATION AGENCY

(SFMTA-2017-42)

**MASTER AGREEMENT FOR SPECIAL SERVICES
UNDER SAN FRANCISCO ADMINISTRATIVE CODE §6.65**

AGREEMENT BETWEEN THE CITY AND COUNTY OF SAN FRANCISCO AND
THYSSENKRUPP ELEVATOR CORP.

This Agreement is made this ____ day of September 2017, in the City and County of San Francisco, State of California, by and between:

ThyssenKrupp Elevator Corporation
520 Townsend Street
San Francisco, Ca 94103

hereinafter referred to as "Contractor," and City and County of San Francisco, a municipal corporation, hereinafter referred to as "City," acting by and through its Municipal Transportation Agency, hereinafter referred to as the "MTA."

Recitals

WHEREAS, the Municipal Transportation Agency wishes to inspect, maintain, and repair elevator and escalator equipment on an if- and as-needed basis at various MTA-owned and/or operated facilities in accordance with the provisions specified in the San Francisco Administrative Code Section 6.65; and,

WHEREAS, Contractor understands that the continuous, safe operation of elevator and escalator equipment is imperative to the MTA in order for the agency to provide transit services to its passengers; and,

WHEREAS, Contractor understands that any delay in repairing MTA-owned elevator and escalator equipment may subject the MTA to possible fines, breach of its legal obligations to provide accessible access, and monetary penalties; and,

WHEREAS, Contractor understands that time is of the essence in repairing MTA-owned elevator and escalator equipment in order to avoid any delay in the operation of MTA-owned elevator and escalator equipment; and,

WHEREAS, Contractor represents and warrants that it is qualified and has the special expertise and experience to perform the services required for City as set forth under this contract; and,

WHEREAS, approval for said Agreement was obtained from the Civil Service Commission by Resolution No. PSC #Not Applicable dated Not Applicable

Now, THEREFORE, the parties agree as follows:

1. Definitions

Where any word or phrase defined below, or a pronoun used in place thereof, is used in any part of

this Agreement and Specifications, it shall have the meaning herein set forth.

AUTHORIZATION: Contract Order of the City and County of San Francisco properly executed by the Director of Transportation and certified by the Controller for the specific funding of this Agreement or any modification thereof.

CITY: City and County of San Francisco, a municipal corporation.

CONTRACTOR: ThyssenKrupp Elevator Corporation

CONTROLLER: Controller of the City and County of San Francisco.

DIRECTOR: Director of Transportation of the City and County of San Francisco.

WORK: The work to be done in providing the services as described and specific in Appendix A, Appendix B, and any Contract Service Order(s) (CSO) issued under this Agreement.

Whenever the words "as directed", "as required", "as permitted", or words of like effect are used, it shall be understood as the direction, requirement, or permission of the MTA. The words "sufficient", "necessary", or "proper", and the like, mean sufficient, necessary or proper in the judgment of the MTA. The words "approval", "acceptable", "satisfactory", or words of like import, shall mean approved by, or acceptable to, or satisfactory to the Department of MTA, unless otherwise indicated by the context.

2. Certification of Funds; Budget and Fiscal Provisions; Termination in the Event of Non-Appropriation

This Agreement is subject to the budget and fiscal provisions of the City Charter. Charges will accrue only after prior written authorization certified by the Controller, and the amount of City's obligation hereunder shall not at any time exceed the amount certified for the purpose and period stated in such advance authorization.

This Agreement will terminate without penalty, liability or expense of any kind to City at the end of any fiscal year in the event funds are not appropriated for the next succeeding fiscal year. If funds are appropriated for a portion of the fiscal year, this Agreement will terminate, without penalty, liability or expense of any kind at the end of the term for which funds are appropriated.

City has no obligation to make appropriations for this Agreement in lieu of appropriations for new or other agreements. City budget decisions are subject to the discretion of the Mayor and the Board of Supervisors. Contractor's assumption of risk of possible non-appropriation is part of the consideration for this Agreement.

THIS SECTION CONTROLS AGAINST ANY AND ALL OTHER PROVISIONS OF THIS AGREEMENT.

3. Term of the Agreement

Subject to Section 2, the term of this Agreement shall be from September 15, 2017 through September 14, 2022.

4. Effective Date of Agreement

This Agreement shall become effective when the Controller has certified to the availability of funds and Contractor has been notified in writing.

5. Services Contractor Agrees to Perform

The Contractor agrees to perform the basic services at the standards provided for in **Appendix A**, "Services and Standards of Performance under Master Agreement For Special Services For Elevator and Escalator," attached hereto and incorporated by reference as though fully set forth herein.

Contractor acknowledges and agrees that this Agreement does not guarantee Contractor any work. For the performance of most specific tasks, the Department, at its sole discretion, shall seek price quotations from at least three special service providers with Master Agreements. The Department shall issue a Contract Service Order ("CSO") for the work to the provider submitting the lowest quotation. In the event that the Department is unable to obtain three quotations, the Director shall base the issuance of the CSO on the quote or quotes received. The Department reserves the right to reject any and all quotes for any reason or no reason. The Director may accept other than the lowest quotation if, in his/her discretion, the public interest would best be served.

The Contractor acknowledges and agrees that once the Department issues a CSO under this Agreement, the scope of work and price as set forth in the CSO shall be binding on Contractor as though fully incorporated into this Agreement.

6. Compensation

Compensation shall be made in monthly payments on or before the 30th day of each month for work, as set forth in Section 5 of this Agreement, that the Director, in his or her sole discretion, concludes has been performed as of the 30th day of the immediately preceding month. In no event shall the amount of this contract exceed five million dollars **\$5,000,000**.

No charges shall be incurred under this Agreement nor shall any payments become due to Contractor until reports, services, or both, required under this Agreement are received from Contractor and approved by the MTA as being in accordance with this Agreement.

In no event shall City be liable for interest or late charges for any late payments.

7. Method of Payment

Invoices furnished by Contractor under this Agreement must be in a form acceptable to Director and Controller. All amounts paid by City to Contractor shall be subject to audit by City.

Payment shall be made by City to Contractor at the address stated hereinabove.

8. Disallowance

In the event Contractor claims or receives payment from City for a service, reimbursement for which is later disallowed by City or State of California or United States Government, Contractor shall promptly refund the disallowed amount to City upon City's request. At its option, City may offset the amount disallowed from any payment due or to become due to Contractor under this Agreement or any other Agreement.

9. Taxes

Payment of any taxes, including California Sales and Use Taxes, levied upon this Agreement, the transaction, or the services delivered pursuant hereto, shall be the obligation of Contractor. Contractor recognizes and understands that this Agreement may create a "possessory interest" for property tax purposes. Generally, such a possessory interest is not created unless the Agreement entitles the Contractor to possession, occupancy, or use of City property for private gain. If such a possessory interest is created, then the following shall apply:

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- a. Contractor, on behalf of itself and any permitted successors and assigns, recognizes and understands that Contractor, and any permitted successors and assigns, may be subject to real property tax assessments on the possessory interest;
- b. Contractor, on behalf of itself and any permitted successors and assigns, recognizes and understands that the creation, extension, renewal, or assignment of this Agreement may result in a "change in ownership" for purposes of real property taxes, and therefore may result in a revaluation of any possessory interest created by this Agreement. Contractor accordingly agrees on behalf of itself and its permitted successors and assigns to report on behalf of the City to the County Assessor the information required by Revenue and Taxation Code section 480.5, as amended from time to time, and any successor provision.
- c. Contractor, on behalf of itself and any permitted successors and assigns, recognizes and understands that other events also may cause a change of ownership of the possessory interest and result in the revaluation of the possessory interest. (see, e.g., Rev. & Tax. Code section 64, as amended from time to time). Contractor accordingly agrees on behalf of itself and its permitted successors and assigns to report any change in ownership to the County Assessor, the State Board of Equalization or other public agency as required by law.
- d. Contractor further agrees to provide such other information as may be requested by the City to enable the City to comply with any reporting requirements for possessory interests that are imposed by applicable law.

10. Payment Does Not Imply Acceptance of Work

The granting of any progress payment by City, or the receipt thereof by Contractor, shall in no way lessen the liability of Contractor to replace unsatisfactory work or material although the unsatisfactory character of such work or material may not have been apparent or detected at the time such payment was made. Materials, components, or workmanship which do not conform to the Specifications will be rejected and shall be replaced by Contractor without delay.

11. Qualified Personnel

Work under this Agreement shall be performed only by competent personnel under the supervision of and in the employment of Contractor. Contractor will conform with City's reasonable requests regarding assignment of personnel, but all personnel, including those assigned at City's request, shall be supervised by Contractor. Contractor shall commit adequate resources to complete the project within the project schedule specified in this Agreement.

12. Responsibility for Equipment

City shall not be responsible for any damage to persons or property as a result of the use, misuse or failure of any equipment used by Contractor, or by any of its employees, even though such equipment be furnished, rented or loaned to Contractor by City. The acceptance or use of such equipment by Contractor or any of its employees shall be construed to mean that Contractor accepts full responsibility for and agrees to exonerate, indemnify, defend and save harmless City from and against any and all claims for any damage or injury of any type arising from the use, misuse or failure of such equipment, whether such damage be to the contractor, its employees, City employees or third parties, or to property belonging to any of the above.

13. Independent Contractor

Contractor shall be deemed at all times to be an independent Contractor and shall be wholly responsible for the manner in which Contractor performs the service required of Contractor by the terms of this Agreement. Contractor shall be liable for the acts and omissions of it, its employees and

its agents. Nothing contained herein shall be construed as creating an employment or agency relationship between City and Contractor. Contractor or any agent or employee of Contractor shall not have employee status with City, nor be entitled to participate in any plans, arrangements, or distributions by City pertaining to or in connection with any retirement, health or other benefits that City may offer its employees. Contractor or any agent or employee of Contractor is liable for the acts and omissions of itself, its employees and its agents. Contractor shall be responsible for all obligations and payments, whether imposed by federal, state or local law, including, but not limited to, FICA, income tax withholdings, unemployment compensation, insurance, and other similar responsibilities related to Contractor's performing services and work, or any agent or employee of Contractor providing same. Nothing in this Agreement shall be construed as creating an employment or agency relationship between City and Contractor or any agent or employee of Contractor.

Any terms in this Agreement referring to direction from City shall be construed as providing for direction as to policy and the result of Contractor's work only, and not as to the means by which such a result is obtained. City does not retain the right to control the means or the method by which Contractor performs work under this Agreement.

Should City, in its discretion, or a relevant taxing authority such as the Internal Revenue Service or the State Employment Development Division, or both, determine that Contractor is an employee for purposes of collection of any employment taxes, the amounts payable under this Agreement shall be reduced by amounts equal to both the employee and employer portions of the tax due (and offsetting any credits for amounts already paid by Contractor which can be applied against this liability). City shall then forward those amounts to the relevant taxing authority.

Should a relevant taxing authority determine a liability for past services performed by Contractor for City, upon notification of such fact by City, Contractor shall promptly remit such amount due or arrange with City to have the amount due withheld from future payments to Contractor under this Agreement (again, offsetting any amounts already paid by Contractor which can be applied as a credit against such liability).

A determination of employment status pursuant to the preceding two paragraphs shall be solely for the purposes of the particular tax in question, and for all other purposes of this Agreement, Contractor shall not be considered an employee of City. Notwithstanding the foregoing, should any court, arbitrator, or administrative authority determine that Contractor is an employee for any other purpose, then Contractor agrees to a reduction in City's financial liability so that City's total expenses under this Agreement are not greater than they would have been had the court, arbitrator, or administrative authority determined that Contractor was not an employee.

14A. Performance Bond and Payment (Labor and Materials) Bond for Contracts in Excess of \$25,000

If the contract amount of this agreement is in excess of \$25,000, Contractor shall submit the Performance and Payment bonds to the MTA when the agreement is awarded as follows:

Contractor shall always have bonds in a total amount equal to or greater than the total dollar value of all CSOs for special services performed under this Agreement.

Prior to commencing any work under this Agreement, Contractor shall provide an initial Performance Bond in the amount of not less than fifty percent (50%) of the amount of the agreement as awarded or \$50,000, whichever is lower and a Payment (Labor and Materials) Bond in the amount not less than fifty percent (50%) of the amount of the agreement as awarded or \$50,000, whichever is lower. The Contractor may alternatively provide Performance and Payment bonds covering 100% of the total possible compensation amount under paragraph 6 of this Agreement.

The Contractor shall provide additional bonds in accordance with this Paragraph 14A in increments of not less than \$50,000 when the total amount of contracted construction activity for all CSOs

approaches or equals \$50,000.

The City will provide forms for bonding. Sureties shall conform to the standards set forth by the City's Risk Manager under San Francisco Administrative Code section 6.22. No work shall commence without the verification of valid Performance and Payment bonds. The City will require Bonds from the entity named in the Agreement and may not accept Bonds from subcontractors.

14B. Insurance

- a. Without in any way limiting Contractor's liability pursuant to Section 15, "Indemnification and General Liability," of this Agreement, Contractor will maintain in force, during the full term of the Agreement, insurance in the following amounts and coverage:
 - (1) Workers' Compensation, in statutory amounts, with Employers' Liability limits not less than \$1,000,000 each accident; and
 - (2) Commercial General Liability Insurance with limits not less than \$1,000,000 each occurrence Combined Single Limit for Bodily Injury and Property Damage, including Contractual Liability, Personal Injury, Products and Completed Operations; and
 - (3) Commercial Automobile Liability Insurance with not less than \$1,000,000 each occurrence Combined Single Limit for Bodily Injury and Property Damage, including Owned, Non-Owned and Hired auto coverage, as applicable.
 - (4) In the event that the Work requires Contractor to provide architectural or engineering design or consultation, Contractor shall submit to the City proof of professional liability insurance with limits not less than \$1,000,000.00 each claim and in the aggregate with respect to negligent acts, errors or omissions, in an deductible not to exceed \$50,000 each claim.
- b. Commercial General Liability and Commercial Automobile Liability Insurance policies shall be endorsed to provide the following:
 - (1) Name as Additional Insured the City and County of San Francisco, its Officers, Agents, and Employees.
 - (2) That such policies are primary insurance to any other insurance available to the Additional Insured, with respect to any claims arising out of this contract, and that insurance applies separately to each insured against whom claim is made or suit is brought.
- c. All policies shall be endorsed to provide:

Thirty (30) days' advance written notice to City of reduction or nonrenewal of coverages or cancellation of coverages for any reason. Notices shall be sent and emailed to the following:

Katherine Kwok
Contracts Administrator
SFMTA, Mechanical Systems Program
425 Geneva Avenue
San Francisco, California 94112
katherine.kwok@sfmta.com
- d. Should any of the required insurance be provided under a claims-made form, Contractor shall maintain such coverage continuously throughout the term of this contract and, without lapse, for a period of three years beyond the contract expiration, to the effect that, should occurrences during the contract term give rise to claims made after expiration of the contract, such claims shall be

covered by such claims-made policies.

- e. Should any of the required insurance, other than professional liability, be provided under a form of coverage that includes a general annual aggregate limit or provides that claims investigation or legal defense costs be included in such general annual aggregate limit, such general annual aggregate limit shall be double the occurrence or claims limits specified above.
- f. Should any required insurance lapse during the term of this Agreement, requests for payments originating after such lapse shall not be processed until the City receives satisfactory evidence of reinstated coverage as required by this Agreement, effective as of the lapse date. If insurance is not reinstated, the City may, at its sole option, terminate this Agreement effective on the date of such lapse of insurance.
- g. Before commencing any services or operations under this Agreement, Contractor shall furnish to City certificates of insurance and additional insured policy endorsements with insurers with ratings comparable to A-, VIII or higher, that are authorized to do business in the State of California, and that are satisfactory to City, in form evidencing all coverages set forth above. Contractor shall furnish complete copies of policies of any or all of the above-listed insurance policies promptly upon City request. Failure to maintain insurance shall constitute a material breach of this Agreement.
- j. Approval of the insurance by City shall not relieve or decrease the liability of Contractor hereunder.

15. Indemnification

- a. Consistent with California Civil Code section 2782, Contractor shall assume the defense of, indemnify and hold harmless the City, its boards and commissions, , and all of their officers, agents, members, employees, authorized representatives, or any other persons deemed necessary by any of them acting within the scope of the duties entrusted to them, from all claims, suits, actions, losses and liability of every kind, nature and description, directly or indirectly arising out of, connected with or resulting from the performance of the Work. This indemnification shall not be valid in the instance where the loss is caused by the sole negligence or intentional tort of any person indemnified herein.
- b. The City, its boards and commissions, and all of their officers, agents, members, employees, and authorized representatives shall have no liability to Contractor for any type of special, consequential or incidental damages arising out of or connected with Contractor's Work. This limit of liability applies under all circumstances including, but not limited to, the breach, completion termination, suspension, cancellation or recession of the Work or this Contract, negligence or strict liability by the City, its boards and commissions, and their representatives, consultants or agents.
- c. Contractor acknowledges that any claims, demands, losses, damages, costs, expenses, and legal liability that arise out of, result from, or are in any way connected with the release or spill of any legally designated hazardous material or waste or contaminated material as a result of the Work performed under this Contract are expressly within the scope of this indemnity, and that the costs, expenses, and legal liability for environmental investigations, monitoring, containment, removal, repair, cleanup, restoration, remedial work, penalties, and fines arising from the violation of any local, state, or federal law or regulation, disbursements, and other response costs within the scope of this indemnity.
- d. On request, Contractor shall defend any action, claim or suit asserting a claim covered by this indemnity. Contractor shall pay all costs that may be incurred by the City and all indemnified.

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- e. Contractor's liability shall not be limited to the amount of insurance coverages required under the Contract Documents.
- f. In the event that Contractor and its insurance carrier(s) in bad faith refuse to negotiate and compensate a third party or parties for property damage or personal injuries which arise out of Contractor's performance of the Work, the City shall have the right to estimate the amount of damages and to pay the same, and the amount so paid shall be deducted from the amount due Contractor under this Contract, or an appropriate amount shall be retained by the City until all suits or claims for said damages shall have been settled or otherwise disposed of and satisfactory evidence to that effect shall have been furnished to the City.

16. Incidental and Consequential Damages

Contractor shall be responsible for incidental and consequential damages to the extent caused by Contractor's negligent acts or omissions. Nothing in this Agreement shall constitute a waiver or limitation or any rights with City may have under applicable law.

17. Liability of City

City's obligations under this contract shall be limited to the payment of the compensation provided for in Section 6 of this Agreement. Notwithstanding any other provision of this Agreement, in no event shall City be liable, regardless of whether any claim is based on contract or tort, for Contractor's own special, consequential, indirect or incidental damages, including, but not limited to, lost profits, arising out of or in connection with this Agreement or the services performed in connection with this Agreement.

18. Liquidated Damages

Contractor acknowledges and agrees that time is of the essence in responding to calls for service and repairs, as set forth in Appendix A of this Agreement, and that failure to respond may result in actual damages to the City which would be extremely difficult to or impracticable to determine. Contractor therefore further acknowledges and agrees that Individual service orders may include liquidated damages, not as a penalty, but as a reasonable estimate of the loss the City would incur based on the delay. Such liquidated damages may be set by the City, at its sole discretion, according to the particular circumstance of the service order. The City may deduct a sum representing the liquidated damages from any money due to Contractor.

19. Termination For Cause

- a. Each of the following shall constitute an event of default ("Event of Default") under this Agreement:
 - (1) Contractor fails or refuses to perform or observe any term, covenant or condition contained in this Agreement, and such default continues for a period of ten days after written notice from City to Contractor.
 - (2) Contractor (A) is generally not paying its debts as they become due, (B) files, or consents by answer or otherwise to the filing against it of, a petition for relief or reorganization or arrangement or any other petition in bankruptcy or for liquidation or to take advantage of any bankruptcy, insolvency or other debtors' relief law of any jurisdiction, (C) makes an assignment for the benefit of its creditors, (D) consents to the appointment of a custodian, receiver, trustee or other officer with similar powers of Contractor or of any substantial part of Contractor's property or (E) takes action for the purpose of any of the foregoing.

- (3) A court or government authority enters an order (A) appointing a custodian, receiver, trustee or other officer with similar powers with respect to Contractor or with respect to any substantial part of Contractor's property, (B) constituting an order for relief or approving a petition for relief or reorganization or arrangement or any other petition in bankruptcy or for liquidation or to take advantage of any bankruptcy, insolvency or other debtors' relief law of any jurisdiction or (C) ordering the dissolution, winding-up or liquidation of Contractor.
- b. On and after any Event of Default, City shall have the right to exercise its legal and equitable remedies, including, without limitation, the right to terminate this Agreement or to seek specific performance of all or any part of this Agreement. In addition, City shall have the right (but no obligation) to cure (or cause to be cured) on behalf of Contractor any Event of Default; Contractor shall pay to City on demand all costs and expenses incurred by City in effecting such cure, with interest thereon from the date of incurrence at the maximum rate then permitted by law. City shall have the right to offset from any amounts due to Contractor under this Agreement or any other agreement between City and Contractor all damages, losses, costs or expenses incurred by City as a result of such Event of Default and any liquidated damages due from Contractor pursuant to the terms of this Agreement or any other agreement.
- c. All remedies provided for in this Agreement may be exercised individually or in combination with any other remedy available hereunder or under applicable laws, rules and regulations. The exercise of any remedy shall not preclude or in any way be deemed to waive any other remedy.

20. Termination For Convenience

- a. City shall have the option, in its sole discretion, to terminate this Agreement, at any time during the term hereof, for convenience and without cause. City shall exercise this option by giving Contractor written notice of termination. The notice shall specify the date on which termination shall become effective.
- b. Upon receipt of the notice, Contractor shall commence and perform, with diligence, all actions necessary on the part of Contractor to effect the termination of this Agreement on the date specified by City and to minimize the liability of Contractor and City to third parties as a result of termination. All such actions shall be subject to the prior approval of City. Such actions shall include, without limitation:
 - (1) Halting the performance of all services and other work under this Agreement on the date(s) and in the manner specified by City.
 - (2) Not placing any further orders or subcontracts for materials, services, equipment or other items.
 - (3) Terminating all existing orders and subcontracts.
 - (4) At City's direction, assigning to City any or all of Contractor's right, title, and interest under the orders and subcontracts terminated. Upon such assignment, City shall have the right, in its sole discretion, to settle or pay any or all claims arising out of the termination of such orders and subcontracts.
 - (5) Subject to City's approval, settling all outstanding liabilities and all claims arising out of the termination of orders and subcontracts.
 - (6) Completing performance of any services or work that City designates to be completed prior to the date of termination specified by City.
 - (7) Taking such action as may be necessary, or as the City may direct, for the protection and

preservation of any property related to this Agreement which is in the possession of Contractor and in which City has or may acquire an interest.

- c. Within 30 days after the specified termination date, Contractor shall submit to City an invoice, which shall set forth each of the following as a separate line item:
 - (1) The reasonable cost to Contractor, without profit, for all services and other work City directed Contractor to perform prior to the specified termination date, for which services or work City has not already tendered payment. Reasonable costs may include a reasonable allowance for actual overhead, not to exceed a total of 10% of Contractor's direct costs for services or other work. Any overhead allowance shall be separately itemized. Contractor may also recover the reasonable cost of preparing the invoice.
 - (2) A reasonable allowance for profit on the cost of the services and other work described in the immediately preceding subsection (1), provided that Contractor can establish, to the satisfaction of City, that Contractor would have made a profit had all services and other work under this Agreement been completed, and provided further, that the profit allowed shall in no event exceed 5% of such cost.
 - (3) The reasonable cost to Contractor of handling material or equipment returned to the vendor, delivered to the City or otherwise disposed of as directed by the City.
 - (4) A deduction for the cost of materials to be retained by Contractor, amounts realized from the sale of materials and not otherwise recovered by or credited to City, and any other appropriate credits to City against the cost of the services or other work.
- d. In no event shall City be liable for costs incurred by Contractor or any of its subcontractors after the termination date specified by City, except for those costs specifically enumerated and described in the immediately preceding subsection (c). Such non-recoverable costs include, but are not limited to, anticipated profits on this Agreement, post-termination employee salaries, post-termination administrative expenses, post-termination overhead or unabsorbed overhead, attorneys' fees or other costs relating to the prosecution of a claim or lawsuit, prejudgment interest, or any other expense which is not reasonable or authorized under such subsection (c).
- e. In arriving at the amount due to Contractor under this Section, City may deduct: (1) all payments previously made by City for work or other services covered by Contractor's final invoice; (2) any claim which City may have against Contractor in connection with this Agreement; (3) any invoiced costs or expenses excluded pursuant to the immediately preceding subsection (d); and (4) in instances in which, in the opinion of the City, the cost of any service or other work performed under this Agreement is excessively high due to costs incurred to remedy or replace defective or rejected services or other work, the difference between the invoiced amount and City's estimate of the reasonable cost of performing the invoiced services or other work in compliance with the requirements of this Agreement.
- f. City's payment obligation under this Section shall survive termination of this Agreement.

21. Rights and Duties Upon Termination or Expiration

Subject to the immediately preceding subsection (a), upon termination of this Agreement prior to expiration of the term specified in Section 2, this Agreement shall terminate and be of no further force or effect. Contractor shall transfer title to City, and deliver in the manner, at the times, and to the extent, if any, directed by City, any work in progress, completed work, supplies, equipment, and other materials produced as a part of, or acquired in connection with the performance of this Agreement, and any completed or partially completed work which, if this Agreement had been completed, would have been required to be furnished to City. This subsection shall survive termination of this

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Agreement.

22. Conflict of Interest

Through its execution of this Agreement, Contractor acknowledges that it is familiar with the provisions of §15.103 and Appendix C 8.105 of City's Charter and §87100 et seq. of the Government Code of the State of California, and certifies that it does not know of any facts which constitute a violation of such provisions.

23. Proprietary or Confidential Information of City

Contractor understands and agrees that, in the performance of the work or services under this Agreement or in contemplation thereof, Contractor may have access to private or confidential information which may be owned or controlled by City and that such information may contain proprietary or confidential details, the disclosure of which to third parties may be damaging to City. Contractor agrees that all information disclosed by City to Contractor shall be held in confidence and used only in performance of the Agreement. Contractor shall exercise the same standard of care to protect such information as a reasonably prudent contractor would use to protect its own proprietary data.

24. Notices to the Parties

All notices to be given by the parties hereto shall be in writing both emailed and by depositing in the United States Post Office, postage prepaid and registered as follows:

To City:

San Francisco Municipal Transportation Agency
Attn: Katherine Kwok, Mechanical Systems Program
425 Geneva Avenue
San Francisco, CA 94112
katherine.kwok@sfmta.com

To Contractor:

ThyssenKrupp Elevator Corp.
520 Townsend Street
San Francisco, Ca 94103

25. Ownership of Results

If, in connection with services performed under this Agreement, Contractor or its subcontractors create artwork, copy, posters, billboards, photographs, videotapes, audiotapes, systems designs, software, reports, diagrams, surveys, blueprints, source codes or any other original works of authorship, such works of authorship shall be works for hire as defined under Title 17 of the United States Code, and all copyrights in such works are the property of the City. If it is ever determined that any works created by Contractor or its subcontractors under this Agreement are not works for hire under U.S. law, Contractor hereby assigns all copyrights to such works to the City, and agrees to provide any material and execute any documents necessary to effectuate such assignment. With the approval of the City, Contractor may retain and use copies of such works for reference and as documentation of its experience and capabilities.

26. Audit and Inspection of Records

Contractor agrees to maintain and make available to City during business hours accurate books and accounting records relative to its activities under this Agreement. Contractor will permit City to audit, examine and make excerpts and transcripts from such books and records, and to make audits of all invoices, materials, payrolls, records or personnel and other data related to all other matters covered by this Agreement, whether funded in whole or in part under this Agreement. Contractor shall maintain such data and records in an accessible location and condition for a period of not less than five years after final payment under this Agreement or until after final audit has been resolved, whichever is later. The State of California or any Federal agency having an interest in the subject of this Agreement shall have the same rights conferred upon City by this Section.

27. Subcontracting

Contractor is prohibited from subcontracting this Agreement or any part of it unless such subcontracting is approved by written instrument executed and approved in the same manner as this Agreement. Neither party shall, on the basis of this Agreement, contract on behalf of or in the name of the other party. Contractor acknowledges and agrees that an independent contractor employed by Contractor to perform work under this Agreement shall be considered a subcontractor for the purposes of this Agreement. An Agreement made in violation of this provision shall confer no rights on any party and shall be null and void.

28. Assignment

The services to be performed by Contractor are personal in character and neither this Agreement nor any duties or obligations hereunder shall be assigned or delegated by Contractor unless approved by written instrument executed and approved in the same manner as this Agreement.

29. Local Business Enterprise and Non-Discrimination in Contracting Ordinance

Contractor shall comply with all applicable provisions of Chapter 14B (LBE Ordinance). Contractor is subject to the enforcement and penalty provisions in Chapter 14B

30. Compliance with South Africa Divestment Ordinance; Liquidated Damages

Not applicable.

31. MacBride Principles--Northern Ireland

The provisions of San Francisco Administrative Code §12F are incorporated herein by this reference and made part of this Agreement. By signing this Agreement, Contractor confirms that Contractor has read and understood that the City urges companies doing business in Northern Ireland to resolve employment inequities and to abide by the MacBride Principles, and urges San Francisco companies to do business with corporations that abide by the MacBride Principles.

32. Alcohol and Drug-Free Workplace

City reserves the right to deny access to, or require Contractor to remove from, City facilities personnel of any Contractor or subcontractor who City has reasonable grounds to believe has engaged in alcohol abuse or illegal drug activity which in any way impairs City's ability to maintain safe work facilities or to protect the health and well-being of City employees and the general public. City shall have the right of final approval for the entry or re-entry of any such person previously denied access to, or removed from, City facilities. Illegal drug activity means possessing, furnishing, selling, offering, purchasing, using or being under the influence of illegal drugs or other controlled substances for which the individual lacks a valid prescription. Alcohol abuse means possessing,

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furnishing, selling, offering, or using alcoholic beverages, or being under the influence of alcohol.

33. Non-Waiver of Rights

The omission by either party at any time to enforce any default or right reserved to it, or to require performance of any of the terms, covenants, or provisions hereof by the other party at the time designated, shall not be a waiver of any such default or right to which the party is entitled, nor shall it in any way affect the right of the party to enforce such provisions thereafter.

34. Modification of Agreement

This Agreement may not be modified, nor may compliance with any of its terms waived, except by written instrument executed and approved in the same manner as this Agreement. Contractor shall cooperate with the MTA to submit to the Contract Compliance Director any amendment, modification, supplement or change order that would result in a cumulative increase of the original amount of this Agreement by more than 20%.

35. Administrative Remedy for Agreement Interpretation

Should any question arise as to the meaning and intent of this Agreement, the question shall, prior to any other action or resort to any other legal remedy, be referred to the Director who shall decide the true meaning and intent of the Agreement.

36. Agreement Made in California; Venue

The formation, interpretation and performance of this Agreement shall be governed by the laws of the State of California, excluding its conflict of laws rules. Venue for all litigation relative to the formation, interpretation and performance of this Agreement shall be in San Francisco.

37. Construction

All paragraph captions are for reference only and shall not be considered in construing this Agreement.

38. Entire Agreement

This contract sets forth the entire Agreement between the parties, and supersedes all other oral or written provisions. This contract may be modified only as provided in Section 34.

39. Tropical Hardwood and Virgin Redwood Ban

The City and County of San Francisco urges contractors not to import, purchase, obtain, or use for any purpose, any tropical hardwood or tropical hardwood wood product, virgin redwood or virgin redwood wood product.

40. Ownership of Equipment

Any equipment, vehicles, computer programs (software licenses and media), etc., purchased by the Contractor or its subcontractors in connection with services to be performed under this Agreement shall become property of and will be transmitted to the City.

41. Guaranteed Maximum Costs

- a. The City's obligations hereunder shall not at any time exceed the amount certified by the Controller for the purpose and period stated in such certification.
- b. Except as may be provided by laws governing emergency procedures, officers and employees of the City are not authorized to request, and the City is not required to reimburse the Contractor for Commodities or Services beyond the agreed upon contract scope unless the changed scope is authorized by amendment and approved as required by law.
- c. Officers and employees of the City are not authorized to offer or promise, nor is the City required to honor, any offered or promised additional funding in excess of the maximum amount of funding for which the contract is certified without certification of the additional amount by the Controller.
- d. The Controller is not authorized to make payments on any contract for which funds have not been certified as available in the budget or by supplemental appropriation.

42. Sunshine Ordinance

In accordance with San Francisco Administrative Code §67.24(e), Contracts, contractor's bids, responses to requests for proposals and all other records of communications between the department and persons or firms seeking contracts shall be open to inspection immediately after a contract has been awarded. Nothing in this provision requires the disclosure of a private person's or organization's net worth or other proprietary financial data submitted for qualification for a contract or other benefit until and unless that person or organization is awarded the contract or benefit. Information provided which is covered by this subdivision will be made available to the public upon request.

43. Non-Discrimination in City Contracts and Benefits Ordinance

- a. Contractor Shall Not Discriminate. In the performance of this Agreement, Contractor agrees not to discriminate on the basis of the fact or perception of a person's race, color, creed, religion, national origin, ancestry, age, sex, sexual orientation, gender identity, domestic partner status, marital status, disability or Acquired Immune Deficiency Syndrome or HIV status (AIDS/HIV status) against any employee of, any City employee working with, or applicant for employment with Contractor, in any of Contractor's operations within the United States, or against any person seeking accommodations, advantages, facilities, privileges, services, or membership in all business, social, or other establishments or organizations operated by Contractor.
- b. Subcontracts. Contractor shall incorporate by reference in all subcontracts the provisions of Sections 12B.2(a), 12B.2(c)-(k), and 12C.3 of the San Francisco Administrative Code and shall require all subcontractors to comply with such provisions. Contractor's failure to comply with the obligations in this subsection shall constitute a material breach of this Agreement.

- c. Non-Discrimination in Benefits. Contractor does not as of the date of this Agreement and will not during the term of this Agreement, in any of its operations in San Francisco or where the work is being performed for the City or elsewhere within the United States, discriminate in the provision of bereavement leave, family medical leave, health benefits, membership or membership discounts, moving expenses, pension and retirement benefits or travel benefits, as well as any benefits other than the benefits specified above, between employees with domestic partners and employees with spouses, and/or between the domestic partners and spouses of such employees, where the domestic partnership has been registered with a governmental entity pursuant to state or local law authorizing such registration, subject to the conditions set forth in Section 12B.2(b) of the San Francisco Administrative Code.
- d. Condition to Contract. As a condition to this Agreement, Contractor shall execute the "Chapter 12B Declaration: Nondiscrimination in Contracts and Benefits" form (Form HRC-12B-101) with supporting documentation and secure the approval of the form by the San Francisco Human Rights Commission.
- g. Incorporation of Administrative Code Provisions by Reference. The provisions of Chapters 12B and 12C of the San Francisco Administrative Code are incorporated in this Section by reference and made a part of this Agreement as though fully set forth herein. Contractor shall comply fully with and be bound by all of the provisions that apply to this Agreement under such Chapters of the Administrative Code, including but not limited to the remedies provided in such Chapters. Without limiting the foregoing, Contractor understands that pursuant to Section 12B.2(h) of the San Francisco Administrative Code, a penalty of \$50 for each person for each calendar day during which such person was discriminated against in violation of the provisions of this Agreement may be assessed against Contractor and/or deducted from any payments due Contractor.

44. Submitting False Claims; Monetary Penalties

Any contractor, subcontractor or consultant who commits any of the following acts shall be liable to the City for three times the amount of damages which the City sustains because of the act of that contractor, subcontractor or consultant. A contractor, subcontractor or consultant who commits any of the following acts shall be liable to the City for the costs, including attorney's fees, of a civil action brought to recover any of those penalties or damages, and may be liable to the City for a civil penalty of up to \$10,000 for each false claim: (a) Knowingly presents or causes to be presented to an officer or employee of the City a false claim or request for payment or approval. (b) Knowingly makes, uses, or causes to be made or used a false record or statement to get a false claim paid or approved by the City. (c) Conspires to defraud the City by getting a false claim allowed or paid by the City. (d) Knowingly makes, uses, or causes to be made or used a false record or statement to conceal, avoid, or decrease an obligation to pay or transmit money or property to the City. (e) Is a beneficiary of an inadvertent submission of a false claim to the City, subsequently discovers the falsity of the claim, and fails to disclose the false claim to the City within a reasonable time after discovery of the false claim.

45. Earned Income Credit (EIC) Forms

(a) Contractor shall provide EIC Forms to each Eligible Employee at each of the following times: (i) within thirty (30) days following the date on which this Agreement becomes effective (unless Contractor has already provided such EIC Forms at least once during the calendar year in which such effective date falls); (ii) promptly after any Eligible Employee is hired by Contractor; and (iii) annually between January 1 and January 31 of each calendar year during the term of this Agreement.

(b) Failure to comply with any requirement contained in subparagraph (a) of this Section shall constitute a material breach by Contractor of the terms of this Agreement. If within thirty (30) days after Contractor receives written notice of such a breach, Contractor fails to cure such breach or, if such breach cannot reasonably be cured within such period of thirty (30) days, Contractor fails to commence efforts to cure within such period or thereafter fails to diligently pursue such cure to completion, the City may pursue any rights or remedies available under this Agreement or under applicable law.

(c) Any Subcontract entered into by Contractor shall require the subcontractor to comply, as to the subcontractor's Eligible Employees, with each of the terms of this Section.

(d) Capitalized terms used in this Section and not defined in this Agreement shall have the meanings assigned to such terms in Section 12O of the San Francisco Administrative Code.

46. Minimum Compensation Ordinance

Contractor shall pay covered employees no less than the minimum compensation required by San Francisco Administrative Code Chapter 12P. Contractor is subject to the enforcement and penalty provisions in Chapter 12P. By signing and executing this Agreement, Contractor certifies that it is in compliance with Chapter 12P.

47. Requiring Health Care Accountability Ordinance

Contractor shall comply with San Francisco Administrative Code Chapter 12Q. Contractor shall choose and perform one of the Health Care Accountability options set forth in San Francisco Administrative Code Chapter 12Q.3. Contractor is subject to the enforcement and penalty provisions in Chapter 12Q.

48. Limitations on Contributions

By executing this Agreement, Contractor acknowledges that it is familiar with Section 1.126 of the City's Campaign and Governmental Conduct Code, which prohibits any person who contracts with the City for the rendition of personal services, for the furnishing of any material, supplies or equipment, for the sale or lease of any land or building, or for a grant, loan or loan guarantee, from making any campaign contribution to (1) an individual holding a City elective office if the contract must be approved by the individual, a board on which that individual serves, or the board of a state agency on which an appointee of that individual serves, (2) a candidate for the office held by such individual, or (3) a committee controlled by such individual, at any time from the commencement of negotiations for the contract until the later of either the termination of negotiations for such contract or six months after the date the contract is approved. The prohibition on contributions applies to each prospective party to the contract; each member of Contractor's board of directors; Contractor's chairperson, chief executive officer, chief financial officer and chief operating officer; any person with an ownership interest of more than 20 percent in Contractor; any subcontractor listed in the bid or contract; and any committee that is sponsored or controlled by Contractor. Contractor must inform each such person of the limitation on contributions imposed by Section 1.126 and provide the names of the persons required to be informed to City.

49. Prohibition on Use of Public Funds for Political Activity

In performing the Services, Contractor shall comply with San Francisco Administrative Code Chapter 12G, which prohibits funds appropriated by the City for this Agreement from being expended to participate in, support, or attempt to influence any political campaign for a candidate or for a ballot measure. Contractor is subject to the enforcement and penalty provisions in Chapter 12G.

50. Resource Conservation

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Chapter 5 of the San Francisco Environment Code ("Resource Conservation") is incorporated herein by reference. Failure by Contractor to comply with any of the applicable requirements of Chapter 5 will be deemed a material breach of contract.

51. Compliance with Americans with Disabilities Act

Contractor shall provide the Services in a manner that complies with the Americans with Disabilities Act (ADA), including but not limited to Title II's program access requirements, and all other applicable federal, state and local disability rights legislation.

52. Preservative-treated Wood Containing Arsenic

As of July 1, 2003, Contractor may not purchase preservative-treated wood products containing arsenic in the performance of this Agreement unless an exemption from the requirements of Chapter 13 of the San Francisco Environment Code is obtained from the Department of the Environment under Section 1304 of the Code. The term "preservative-treated wood containing arsenic" shall mean wood treated with a preservative that contains arsenic, elemental arsenic, or an arsenic copper combination, including, but not limited to, chromated copper arsenate preservative, ammoniacal copper zinc arsenate preservative, or ammoniacal copper arsenate preservative. Contractor may purchase preservative-treated wood products on the list of environmentally preferable alternatives prepared and adopted by the Department of the Environment. This provision does not preclude Contractor from purchasing preservative-treated wood containing arsenic for saltwater immersion. The term "saltwater immersion" shall mean a pressure-treated wood that is used for construction purposes or facilities that are partially or totally immersed in saltwater.

53. Compliance with Laws

Contractor shall keep itself fully informed of the City's Charter, codes, ordinances and regulations of the City and of all state, and federal laws in any manner affecting the performance of this Agreement, and must at all times comply with such local codes, ordinances, and regulations and all applicable laws as they may be amended from time to time.

54. Nondisclosure of Private Information

Contractor agrees to comply fully with and be bound by all of the provisions of Chapter 12M of the San Francisco Administrative Code (the "Nondisclosure of Private Information Ordinance"), including the remedies provided. The provisions of the Nondisclosure of Private Information Ordinance are incorporated herein by reference and made a part of this Agreement as though fully set forth. Capitalized terms used in this Section and not defined in this Agreement shall have the meanings assigned to such terms in the Nondisclosure of Private Information Ordinance. Consistent with the requirements of the Nondisclosure of Private Information Ordinance, Contractor agrees to all of the following:

- (a) Neither Contractor nor any of its Subcontractors shall disclose Private Information obtained from the City in the performance of this Agreement to any other Subcontractor, person, or other entity, unless one of the following is true:
 - (i) The disclosure is authorized by this Agreement;
 - (ii) The Contractor received advance written approval from the Contracting Department to disclose the information; or
 - (iii) The disclosure is required by law or judicial order.

- (b) Any disclosure or use of Private Information authorized by this Agreement shall be in accordance with any conditions or restrictions stated in this Agreement. Any disclosure or use of Private Information authorized by a Contracting Department shall be in accordance with any conditions or restrictions stated in the approval.
- (c) Private Information shall mean any information that: (1) could be used to identify an individual, including without limitation, name, address, social security number, medical information, financial information, date and location of birth, and names of relatives; or (2) the law forbids any person from disclosing.
- (f) Any failure of Contractor to comply with the Nondisclosure of Private Information Ordinance shall be a material breach of this Agreement. In such an event, in addition to any other remedies available to it under equity or law, the City may terminate this Agreement, debar Contractor, or bring a false claim action against Contractor.

b. Graffiti Removal

Graffiti is detrimental to the health, safety and welfare of the community in that it promotes a perception in the community that the laws protecting public and private property can be disregarded with impunity. This perception fosters a sense of disrespect of the law that results in an increase in crime; degrades the community and leads to urban blight; is detrimental to property values, business opportunities and the enjoyment of life; is inconsistent with the City's property maintenance goals and aesthetic standards; and results in additional graffiti and in other properties becoming the target of graffiti unless it is quickly removed from public and private property. Graffiti results in visual pollution and is a public nuisance. Graffiti must be abated as quickly as possible to avoid detrimental impacts on the City and County and its residents, and to prevent the further spread of graffiti.

Contractor shall remove all graffiti from any real property owned or leased by Contractor in the City and County of San Francisco within forty eight (48) hours of the earlier of Contractor's (a) discovery or notification of the graffiti or (b) receipt of notification of the graffiti from the Department of Public Works. This section is not intended to require a Contractor to breach any lease or other agreement that it may have concerning its use of the real property. The term "graffiti" means any inscription, word, figure, marking or design that is affixed, marked, etched, scratched, drawn or painted on any

building, structure, fixture or other improvement, whether permanent or temporary, including by way of example only and without limitation, signs, banners, billboards and fencing surrounding construction sites, whether public or private, without the consent of the owner of the property or the owner's authorized agent, and which is visible from the public right-of-way. "Graffiti" shall not include: (1) any sign or banner that is authorized by, and in compliance with, the applicable requirements of the San Francisco Public Works Code, the San Francisco Planning Code or the San Francisco Building Code; or (2) any mural or other painting or marking on the property that is protected as a work of fine art under the California Art Preservation Act (California Civil Code Sections 987 et seq.) or as a work of visual art under the Federal Visual Artists Rights Act of 1990 (17 U.S.C. §§ 101 et seq.).

Any failure of Contractor to comply with this section of this Agreement shall constitute an Event of Default of this Agreement.

56. Force Majeure

Under no circumstances shall Contractor be liable for any loss, damage or delay due to any cause beyond its reasonable control, including but not limited to acts of government, strikes, lockouts, labor disputes, fire, explosion, theft, weather damage, flood, earthquake, riot, civil commotion, war, malicious mischief or act of God.

57. Alcohol and Drug-Free Workplace

City reserves the right to deny access to, or require Contractor to remove from, City facilities personnel of any Contractor or subcontractor who City has reasonable grounds to believe has engaged in alcohol abuse or illegal drug activity which in any way impairs City's ability to maintain safe work facilities or to protect the health and well-being of City employees and the general public. City shall have the right of final approval for the entry or re-entry of any such person previously denied access to, or removed from, City facilities. Illegal drug activity means possessing, furnishing, selling, offering, purchasing, using or being under the influence of illegal drugs or other controlled substances for which the individual lacks a valid prescription. Alcohol abuse means possessing, furnishing, selling, offering, or using alcoholic beverages, or being under the influence of alcohol.

58. Sugar-Sweetened Beverage Prohibition

Contractor agrees that it will not sell, provide, or otherwise distribute Sugar-Sweetened Beverages, as defined by San Francisco Administrative Code Chapter 101, as part of its performance of this Agreement.

59. Tropical Hardwood and Virgin Redwood Ban

Pursuant to San Francisco Environment Code Section 804(b), the City urges Contractor not to import, purchase, obtain, or use for any purpose, any tropical hardwood, tropical hardwood wood product, virgin redwood or virgin redwood wood product.

Contractor shall comply with San Francisco Environment Code Chapter 8, which provides that except as expressly permitted by the application of Sections 802(b) and 803(b) of the San Francisco Environment Code, Contractor shall not provide any items to the City in performance of this contract which are tropical hardwoods, tropical hardwood wood products, virgin redwood or virgin redwood wood products. Contractor is subject to the penalty and enforcement provisions of Chapter 8.

60. Preservative Treated Wood Products

Contractor shall comply with the provisions of San Francisco Environment Code Chapter 13, which requires that each Contractor purchasing preservative-treated wood products on behalf of the City, shall only purchase such products from the list of alternatives adopted by the Department of the Environment pursuant to Section 1302 of Chapter 13, unless otherwise granted an exemption by the terms of that Chapter.

61. Large Vehicle Driver Safety Training Requirements

Contractor agrees that before any of its employees and subcontractors drive large vehicles within the City and County of San Francisco, those employees and subcontractors shall successfully complete either (a) the SFMTA's Large Vehicle Urban Driving Safety training program or (b) a training program that meets the SFMTA's approved standards for large vehicle urban driving safety. The SFMTA's approved standards for large vehicle urban driving safety is available for download at www.SFMTA.com/largevehicletainingstandards. This requirement does not apply to drivers providing delivery services who are not employees or subcontractors of the Contractor. For purposes of this section, "large vehicle" means any single vehicle or combination of vehicle and trailer with an unladen weight of 10,000 pounds or more, or a van designed to carry 10 or more people.

By entering into this Agreement, Contractor agrees that in the event the Contractor fails to comply

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with the Large Vehicle Driver Safety Training Requirements, the City will suffer actual damages that will be impractical or extremely difficult to determine; further, Contractor agrees that the sum of up to One Thousand Dollars (\$1,000) per employee or subcontractor who is permitted to drive a large vehicle in violation of these requirements is not a penalty, but is a reasonable estimate of the loss that City will incur based on the Contractor's failure to comply with this requirement, established in light of the circumstances existing at the time this Contract was awarded. City may deduct a sum representing the liquidated damages from any money due to Contractor. Such deductions shall not be considered a penalty, but rather agreed monetary damages sustained by City because of Contractor's failure to comply.

62. Severability

Should the application of any provision of this Agreement to any particular facts or circumstances be found by a court of competent jurisdiction to be invalid or unenforceable, then (a) the validity of other provisions of this Agreement shall not be affected or impaired thereby, and (b) such provision shall be enforced to the maximum extent possible so as to effect the intent of the parties and shall be reformed without further action by the parties to the extent necessary to make such provision valid and enforceable.

63. Cooperative Drafting

This Agreement has been drafted through a cooperative effort of City and Contractor, and both Parties have had an opportunity to have the Agreement reviewed and revised by legal counsel. No Party shall be considered the drafter of this Agreement, and no presumption or rule that an ambiguity shall be construed against the Party drafting the clause shall apply to the interpretation or enforcement of this Agreement.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the day first mentioned above.

<p>CITY</p> <p>San Francisco Municipal Transportation Agency</p> <hr/> <p>Edward D. Reiskin Director of Transportation</p> <p>Approved as to Form:</p> <p>Dennis J. Herrera City Attorney</p> <p>By: _____ John I. Kennedy Deputy City Attorney</p> <p>AUTHORIZED BY:</p> <p>MUNICIPAL TRANSPORTATION AGENCY BOARD OF DIRECTORS</p> <p>Resolution No: _____</p> <p>Adopted: _____</p> <p>Attest: _____ Roberta Boomer, Secretary</p>	<p>CONTRACTOR</p> <p>ThyssenKrupp Elevator Corporation</p> <hr/> <p>520 Townsend Street San Francisco, Ca 94103</p> <p>By signing this Agreement, I have read and understood Sec. 31, the city's statement urging companies doing business in Northern Ireland to move towards resolving employment inequities, encouraging compliance with the MacBride Principles, and urging San Francisco companies to do business with corporations that abide by the MacBride Principles.</p> <p>City vendor number: 06675</p>
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APPENDIX A

SCOPE OF SERVICES AND STANDARDS OF PERFORMANCE UNDER MASTER AGREEMENT FOR SPECIAL SERVICES FOR THE INSPECTION, MAINTENANCE AND REPAIR OF ELEVATOR AND ESCALATOR

Bidding Packages shall be issued for each facility or facilities to be serviced. Each Bidding Package shall include specific terms and conditions in the specifications for the Contract Service Order (CSO) award that shall be used in lieu of the Scope of Services and Standards of Performance in Appendix A. No terms and conditions in the Bidding Package are intended to conflict with the terms and conditions of the Master Agreement For Special Services; however, if a conflict exists, the terms and conditions of the Master Agreement For Special Services shall govern. In the event that a Bidding Package is not issued for a bid quotation, the terms and conditions in the Scope of Services and Standards of Performance in Appendix A shall be used.

1. SCOPE OF WORK

The scope of work shall include the furnishing of all labor, materials, equipment and services necessary for and incidental to the full service maintenance of elevators and escalators at various locations within the City & County of San Francisco.

NOTE: Contractor will be responsible for all permits, fees, building inspections and other requirements in connection with the execution of the above scope of work. If additional work not related to the above scope of work is required the contractor shall notify the contract manager in writing of any discrepancies and submit a written proposal if work can be performed by contractor. Contractor will comply with all Federal, State and local environmental regulations and follow outlined procedures.

2. NOTICE OF START OF WORK

The Contractor shall notify Katherine Kwok at (415) 646-2448 at least five (5) days prior to starting work.

3. SCHEDULING

The areas are presently occupied and the contractor shall arrange a schedule with Scott Broder, Elevator/Escalator Inspector at (415) 509-6929.

4. TIME ALLOWED FOR COMPLETION

Time allowed for full performance of the Contract Service Order referenced by this document is 30 working days from award and orders to begin performance which will be issued by Katherine Kwok at (415) 646-2448.

5. COMPLETION OF WORK

All work shall be completed in a manner satisfactory to the Elevator/Escalator Inspector within 30 days of award of a Contract Service Order.

6. OBTAINING PLANS AND SPECIFICATIONS

Plans and specifications are available at 425 Geneva Ave, San Francisco, Ca 94112. To obtain a copy of plans and specifications contact Katherine Kwok at (415) 646-2448.

7. INSPECTION OF THE SITE

The Contractor shall inspect the location of the work and familiarize himself or herself with the conditions under which the work shall be performed, and verify that all conditions, dimensions

and specifications are as indicated on the drawings prior to submittal of bid. Do not proceed with affected work until any variations or discrepancies are resolved by Scott Broder at (415) 509-6929.

8. PROTECTION OF PROPERTY

Keep construction area broom clean. All work shall be done in neat, clean and professional manner. Protect from damage all materials, construction, utilities and other items and appurtenances not scheduled for demolition. Any damage that should occur shall be repaired as incidental work under the contract at no additional cost to the City.

9. DEBRIS

All dirt, rubbish and debris caused by the work shall be hauled away by the contractor. Premises will be left in a clean and orderly condition at the completion of each days work.

10. LABOR STANDARDS

Contractor shall comply with the mandate under San Francisco Charter section A7.204 and Administrative section 6.22(E) and shall pay its workers performing work under this Agreement the prevailing wage for the craft or crafts required to complete the work. The Board of Supervisors determines the prevailing wage rates and such wage rates are available at the San Francisco Office of Labor Standards Enforcement ("OLSE") or through the California Department of Industrial Relations. In the event that Contractor employs a subcontractor to perform work under this Agreement, Contractor shall require its subcontractor(s) likewise comply with the prevailing wage requirements.

The Contractor shall keep for a period of four years from the date of performance of any CSO, payrolls and basic records including time cards, trust fund forms, apprenticeship agreements, accounting ledgers, tax forms and superintendent and foreman daily logs for all trades workers performing work under this Agreement. Such records shall include the name, address and social security number of each worker who worked under a CSO, including apprentices, his/her classification, a general description of the work each worker performed each day, the rate of pay (including fringe benefits), daily and weekly number of hours worked, deductions made and actual wages paid. The Contractor shall require its subcontractors, if any, to maintain the same records.

The Contractor shall maintain weekly certified payroll records for submission to the awarding department as required. The Contractor shall be responsible for the submission of payroll records of its subcontractors, if any.

All payroll and related records described in the foregoing paragraphs shall at all times be open to inspection and examination of the duly authorized officers and agents of the City and County of San Francisco, including representatives of the Office of Labor Standards Enforcement.

The Contractor further acknowledges and agrees that it shall comply with the City's labor standards enforcement procedures as follows:

1. Contractor shall cooperate fully with the Labor Standards Enforcement Officer and other City employees and agents authorized to assist in the administration and enforcement of the prevailing wage and other labor standards requirements;

2. The Labor Standards Enforcement Officer and his or her designees, in the performance of his/her duties, shall have the right to engage in random inspections of job sites and to have access to the employees of the contractor, employee time sheets, inspection logs, payroll records and employee paychecks;
3. Contractor shall maintain a sign-in and sign-out sheet showing which employees are present on the job site;
4. Contractor shall prominently post at each job-site a sign informing employees that the work is subject to the City's prevailing wage requirements with reference to the Office of Labor Standards Enforcement;
5. The Office of Labor Standards Enforcement may audit such records of the contractor as he or she reasonably deems necessary to determine compliance with the prevailing wage and other labor standards imposed by the City Charter and the Administrative Code.

Failure to comply with the labor standards provisions of this Agreement may result in a forfeiture of penalties and back wages under Administrative Code section 6.22(E)(8).

11. DEMOLITION

Demolition is not limited to what is shown on the drawings. The intent of the drawings is to indicate the general scope of the work required. Notify Katherine Kwok at (415) 646-2448 of any discrepancies.

12. MATERIALS

All work and materials shall be new unless otherwise noted.

13. ASBESTOS

If during the course of the work performed it is discovered that there is a potential for disturbing asbestos containing material, work must be suspended immediately until it is determined that it is safe to proceed and/or adequate control measures have been established.

14. ASBESTOS INFORMATION

Attached hereto and incorporated by reference as though fully set forth herein.

15. INSTALLATION

The contractor shall furnish all labor, equipment and materials to provide for the installation of the following:

- A. Repair & maintenance of City owned elevators and escalators at various locations.

16. STANDARDS

All work to comply with Title 21 and Title 24 of the CAC and to conform with Federal ADA (Americans with Disabilities Act) Standards.

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APPENDIX B

SCHEDULE OF VALUES

Billing Rates shall be based on the bid quotations awarded for each Contract Service Order (CSO).