

**THIS PRINT COVERS CALENDAR ITEM NO.: 10.5**

**SAN FRANCISCO  
MUNICIPAL TRANSPORTATION AGENCY**

**DIVISION:** Transit – Maintenance & Way

**BRIEF DESCRIPTION:**

Authorizing the Director of Transportation to retroactively execute Master Agreements with Otis Elevator Company, Schindler Elevator Corporation, and KONE, Inc. for the maintenance and repair of elevators and escalators in the Muni Metro System and at various facilities for a period not to exceed five years from March 1, 2013 through February 28, 2018.

**SUMMARY:**

- Authorizing the Director of Transportation to retroactively execute three Master Agreements for maintenance of elevators and escalators in the Muni Metro System and at various facilities from March 1, 2013 through February 28, 2018.
- Since the total contract amount for each agreement exceeds \$100,000.00 for a term of five years these agreements are being submitted to the SFMTA Board for approval.
- Staff recommends that the SFMTA Board authorize the Director of Transportation to retroactively execute three Master Service Agreements for a period not to exceed five years with Otis Elevator Company for an amount not to exceed \$488,280, Schindler Elevator Corporation for an amount not to exceed \$2,257, 611, and KONE, Inc. for an amount not to exceed \$1,419,506.
- The current fiscal year’s allocation for elevator/escalator maintenance is \$1,047,674. The averaged total cost per year for elevator/escalator maintenance is \$978,079.

**ENCLOSURES:**

1. Resolution
2. Equipment Roster
3. Master Agreements for Otis Elevator Company, Schindler Elevator Corporation, and KONE, Inc.

**APPROVALS:**

**DATE**

DIRECTOR	<i>John J. Haley</i>	5/8/13
----------	----------------------	--------

SECRETARY		5/8/13
-----------	--	--------

**ASSIGNED SFMTAB CALENDAR DATE:** May 21, 2013

## **PAGE 2.**

### **PURPOSE**

Authorizing the Director of Transportation to retroactively execute Master Agreements with Otis Elevator Company for an amount not to exceed \$488,280, Schindler Elevator Corporation for an amount not to exceed \$2,257, 611, and KONE, Inc. for an amount not to exceed \$1,419,506 for maintenance and repair of elevators and escalators in the Muni Metro System and at various facilities for a period not to exceed five years from March 1, 2013 through February 28, 2018.

### **GOAL**

These Master 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.

### **DESCRIPTION**

#### Background

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-needed basis. For the performance of specific work, the SFMTA must seek price quotations from pre-qualified service providers with executed 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 better serve the public interest.

At this time, the Municipal Transportation Agency – Transit Services, 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.

**PAGE 3.**

Since the original installation, all elevator and escalator equipment has been maintained by the five original manufacturers or their successor companies under prior elevator/escalator maintenance agreements which have now expired. In 2009, the SFMTA entered into a Master Service Agreement with ThyssenKrupp Elevator Company that expires on July 31, 2014. In 2011, the SFMTA entered into a Master Agreement with Star Elevator, Inc. that expires on June 30, 2016. In order to continue to receive services from the remaining three manufacturers or their successor companies, the SFMTA must now enter into new Master Agreements with Otis Elevator Company, Schindler Elevator Corporation, and KONE, Inc.

Request for Retroactive Approval

The three prior elevator and escalator repair and maintenance Master Agreements with Otis Elevator Company, Schindler Elevator Corporation, and KONE, Inc. expired on February 28, 2013. Prior to the expiration of these agreements, SFMTA staff decided not present these Master Agreements for renewal to the SFMTA Board. SFMTA staff wanted to observe how the new escalator equipment installed at Church Street Station, Hallidie Plaza, and Van Ness Station in late 2012 and early 2013, under Phase I of the escalator modernization contract, performed in the outdoor MUNI environment. SFMTA staff observed that the new electronic safety switches and sensors were shutting down the escalators more frequently than anticipated and required resetting due to unknown causes. In response to this problem, SFMTA staff wanted to ensure that the cost for resetting the new electronic safety switches and sensors was covered under the fixed monthly maintenance cost to alleviate disputes as to the cause of the shutdown problem. SFMTA personnel are not permitted to reset these safety switches and sensors since they are not CAL OSHA certified to repair escalators. This decision will benefit all future escalator and elevator renovation contracts including Phase II of the escalator modernization contract and the Central Subway project.

**ALTERNATIVES CONSIDERED**

Staff considered whether it was feasible for the work to be performed by the remaining two special service contractors, Star Elevator and/or Thyssen Krupp Elevator. Both companies declined to bid on the work as specified. Staff determined that recommending award to Otis Elevator Company, Schindler Elevator Corporation, and KONE, Inc. was the practical alternative.

**FUNDING IMPACT**

Funds for this work are available under the Transit Service Division's operating budget.

Staff anticipates that the fiscal year cost for maintenance and repair of elevators and escalators will not exceed the current budget allocation of \$1,047,674.00. This amount includes repair work associated with vandalism and misuse of the equipment.

**OTHER APPROVALS RECEIVED OR STILL REQUIRED**

The City Attorney has reviewed this report.

No other approval is required.

## **RECOMMENDATION**

Staff recommends that the SFMTA Board of Directors authorize the Director of Transportation to retroactively execute Master Agreements with Otis Elevator Company for an amount not to exceed \$488,280, Schindler Elevator Corporation for an amount not to exceed \$2,257, 611, and KONE, Inc. for an amount not to exceed \$1,419,506 for maintenance and repair of elevators and escalators in the Muni Metro System and at various facilities for a period not to exceed five years from March 1, 2013 through February 28, 2018.

SAN FRANCISCO  
MUNICIPAL TRANSPORTATION AGENCY  
CITY AND COUNTY OF SAN FRANCISCO

RESOLUTION NO. \_\_\_\_\_

WHEREAS, San Francisco Administrative Code section 6.65 requires that City departments award master agreements for elevator and escalator inspection, maintenance and repair on an as-needed basis; and

WHEREAS, For the performance of specific work, the SFMTA must seek price quotations from pre-qualified service providers with executed Master Agreements; and

WHEREAS, For contracts that exceed \$100,000, the Director of Transportation is authorized to execute such an agreement upon approval by the SFMTA Board of Directors; and

WHEREAS, Staff recommends that the SFMTA enter into Master Agreements with Otis Elevator Company, Schindler Elevator Corporation, and KONE, Inc. for elevator/escalator maintenance and repair work in the MUNI Metro system and at various facilities; and

WHEREAS, Retroactive approval for these Master Agreements is requested due to the need by SFMTA staff to ensure that the cost for resetting the new electronic safety switches and sensors was covered under the fixed monthly maintenance cost; and

WHEREAS, Staff recommends approval of the Master Service Agreement with Otis Elevator Company in an amount not to exceed \$488,280.00 for a period of five years from March 1, 2013 through February 28, 2018; and

WHEREAS, Staff recommends approval of the Master Service Agreement with Schindler Elevator Corporation in an amount not to exceed \$2,257,611.00 for a period of five years from March 1, 2013 through February 28, 2018; and

WHEREAS, Staff recommends approval of the Master Service Agreement with KONE, Inc. in an amount not to exceed \$1,419,506 for a period of five years from March 1, 2013 through February 28, 2018; now therefore be it

RESOLVED, That the SFMTA Board authorizes the Director of Transportation to retroactively execute Master Agreements with Otis Elevator Company for an amount not to exceed \$488,280, Schindler Elevator Corporation for an amount not to exceed \$2,257,611, and KONE, Inc. for an amount not to exceed \$1,419,506 for maintenance and repair of elevator and escalator in the Muni Metro System and at various locations for a period not to exceed five years from March 1, 2013 through February 28, 2018.

I certify that the foregoing resolution was adopted by the San Francisco Municipal Transportation Agency Board of Directors at its meeting of May 21, 2013

---

Secretary to the Board of Directors  
San Francisco Municipal Transportation Agency

Elevator-Escalator-Lift Roster

STATE NUMBER	LOCATION	EQUIPMENT TYPE	MANUFACTURER	MAINTENANCE BY
M161672	EMBARCADERO	ESCALATOR	Westinghouse	Schindler Elevator Co
M161673	EMBARCADERO	ESCALATOR	Westinghouse	Schindler Elevator Co
M161670	EMBARCADERO	ESCALATOR	Westinghouse	Schindler Elevator Co
M161671	EMBARCADERO	ESCALATOR	Westinghouse	Schindler Elevator Co
M156509	MONTGOMERY	ESCALATOR	Westinghouse	Schindler Elevator Co
M256502	MONTGOMERY	ESCALATOR	Westinghouse	Schindler Elevator Co
M156526	POWELL	ESCALATOR	Westinghouse	Schindler Elevator Co
M456321	POWELL	ESCALATOR	Westinghouse	Schindler Elevator Co
M255871	POWELL	ESCALATOR	KONE	Kone Corp
M355872	POWELL	ESCALATOR	KONE	Kone Corp
M555873	POWELL	ESCALATOR	Otis	Otis Elevator Co
M655874	POWELL	ESCALATOR	Otis	Otis Elevator Co
M158884	CIVIC CENTER	ESCALATOR	Westinghouse	Schindler Elevator Co
M258881	CIVIC CENTER	ESCALATOR	Westinghouse	Schindler Elevator Co
M157476	VAN NESS	ESCALATOR	KONE	Kone Corp.
M257477	VAN NESS	ESCALATOR	KONE	Kone Corp.
M357478	VAN NESS	ESCALATOR	Westinghouse	Schindler Elevator Co
M163660	VAN NESS	ELEVATOR	Montgomery	Kone Corp.
M264705	VAN NESS	ELEVATOR	Montgomery	Kone Corp.
71402	VAN NESS	ESCALATOR	Montgomery	Kone Corp.
M160259	CHURCH	ESCALATOR	Montgomery	Kone Corp.
M260258	CHURCH	ESCALATOR	Montgomery	Kone Corp.
M360256	CHURCH	ESCALATOR	Montgomery	Kone Corp.
M460257	CHURCH	ESCALATOR	KONE	Kone Corp.
M559594	CHURCH	ELEVATOR	U. S. Elevator	Thyssen Krupp
M559600	CHURCH	ELEVATOR	U. S. Elevator	Thyssen Krupp
M660255	CHURCH	ELEVATOR	U. S. Elevator	Thyssen Krupp
M261092	CASTRO	ESCALATOR	Westinghouse	Schindler Elevator Co
M361089	CASTRO	ESCALATOR	Westinghouse	Schindler Elevator Co
M461090	CASTRO	ESCALATOR	Westinghouse	Schindler Elevator Co
M661088	CASTRO	ELEVATOR	U. S. Elevator	Thyssen Krupp

Elevator-Escalator-Lift Roster

STATE NUMBER	LOCATION	EQUIPMENT TYPE	MANUFACTURER	MAINTENANCE BY
M761637	CASTRO	ELEVATOR	U. S. Elevator	Thyssen Krupp
M861638	CASTRO	ELEVATOR	U. S. Elevator	Thyssen Krupp
M151257	FOREST HILL	ELEVATOR	Dover	Thyssen Krupp
M277639	FOREST HILL	ELEVATOR	Dover	Thyssen Krupp
M377638	FOREST HILL	ELEVATOR	Dover	Thyssen Krupp
M477640	FOREST HILL	ELEVATOR	Dover	Thyssen Krupp
M165997	WEST PORTAL	ESCALATOR	Westinghouse	Schindler Elevator Co
M265998	WEST PORTAL	ESCALATOR	Westinghouse	Schindler Elevator Co
O77522	CABLE CAR BARN	ELEVATOR	Montgomery	Kone Corp.
077624	CABLE CAR BARN	ELEVATOR	Montgomery	Kone Corp.
M126954	PRESIDIO	ELEVATOR	Otis	Otis Elevator Co
M226955	PRESIDIO	ELEVATOR	Otis	Otis Elevator Co
M163528	WOODS	ELEVATOR	Atlas	Star Elevator Co
M263529	WOODS	ELEVATOR	Atlas	Star Elevator Co
M563530	WOODS	DUMBWAITER	Atlas	Star Elevator Co
M463531	WOODS	DUMBWAITER	Atlas	Star Elevator Co
77786	GREEN ANNEX	ELEVATOR	Otis	Otis Elevator Co
M74103	GENEVA ANNEX	ELEVATOR	American	Schindler Elevator Co
091997	SCOTT GARAGE	ELEVATOR	Dover	Thyssen Krupp
091996	SCOTT GARAGE	ELEVATOR	Dover	Thyssen Krupp
M475588	700 PENN	ELEVATOR	Otis	Otis Elevator Co.
M475589	700 PENN	ELEVATOR	Otis	Otis Elevator Co.
118854	DPT Facility	ELEVATOR	unknown	Thyssen Krupp
118853	DPT Facility	ELEVATOR	unknown	Thyssen Krupp
118852	DPT Facility	ELEVATOR	unknown	Thyssen Krupp

Elevator-Escalator-Lift Roster

STATE NUMBER	LOCATION	EQUIPMENT TYPE	MANUFACTURER	MAINTENANCE BY
14841	METRO EAST	ELEVATOR	Thyssen Krupp	Thyssen Krupp
14842	METRO EAST	ELEVATOR	Thyssen Krupp	Thyssen Krupp
14843	METRO EAST	ELEVATOR	Thyssen Krupp	Thyssen Krupp
unknown	Geneva & San Jose	VERTICAL LIFT	unknown	Otis Elevator Co
139253	1st & Market	VERTICAL LIFT	unknown	Otis Elevator Co
139251	5th & Market (IB)	VERTICAL LIFT	unknown	Otis Elevator Co
139252	5th & Market (OB)	VERTICAL LIFT	unknown	Otis Elevator Co
139255	Church & Market	VERTICAL LIFT	unknown	Otis Elevator Co



**CITY AND COUNTY OF SAN FRANCISCO  
MUNICIPAL TRANSPORTATION AGENCY**

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

AGREEMENT BETWEEN THE CITY AND COUNTY OF SAN FRANCISCO AND  
  
OTIS ELEVATOR COMPANY  
A UNITED TECHNOLOGIES COMPANY

This Agreement is made this 1st day of March, 2013, in the City and County of San Francisco, State of California, by and between:

Otis Elevator Company  
444 Spear Street Suite 100  
San Francisco, CA 94105

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.:

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	Otis Elevator Co..
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 specified in Appendix A and Appendix B.

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 March 1, 2013 through February 28, 2018.

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 30<sup>th</sup> 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 30<sup>th</sup> day of the immediately preceding month. In no event shall the amount of this contract exceed dollars **\$488,280.00**.

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 to the following address:

Rosa Rankin  
Contracts Administrator  
MOW – Infrastructure Maintenance  
700 Pennsylvania Street  
San Francisco, California 94107

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 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 and served by depositing same in the United States Post Office, postage prepaid and registered as follows:

To City:  
Municipal Transportation Agency  
Contracts Administrator, MOW-Infrastructure Maintenance  
700 Pennsylvania Avenue.

San Francisco, CA 94107

To Contractor:  
Otis Elevator Company  
444 Spear Street Suite 100  
San Francisco, CA 94105

## 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. Disadvantaged Business Enterprise Utilization; Liquidated Damages

### a. The DBE Ordinance

Contractor, shall comply with all the requirements of the Disadvantaged Business Enterprise Ordinance set forth in Chapter 14A of the San Francisco Administrative Code as it now exists or as it may be amended in the future (collectively the "DBE Ordinance"), provided such amendments do not materially increase Contractor's obligations or liabilities, or materially diminish Contractor's rights, under this Agreement. Such provisions of the DBE Ordinance are incorporated by reference and made a part of this Agreement as though fully set forth in this section. Contractor's willful failure to comply with any applicable provision of the DBE Ordinance is a material breach of Contractor's obligations under this Agreement and shall entitle City, subject to any applicable notice and cure provisions set forth in this Agreement, to exercise any of the remedies provided for under this Agreement, under the DBE Ordinance or otherwise available at law or in equity, which remedies shall be cumulative unless this Agreement expressly provides that any remedy is exclusive. In addition, Contractor shall comply fully with all other applicable local, state and federal laws prohibiting discrimination and requiring equal opportunity in contracting, including subcontracting.

### b. Compliance and Enforcement

If Contractor willfully fails to comply with any of the provisions of the DBE Ordinance, the rules and regulations implementing the DBE Ordinance, or the provisions of this Agreement pertaining to DBE participation, Contractor shall be liable for liquidated damages in an amount equal to Contractor's net profit on this Agreement, or 10% of the total amount of this Agreement, or \$1,000, whichever is greatest. The Director of the City's Human Rights Commission or any other public official authorized to enforce the DBE Ordinance (separately and collectively, the "Director of HRC") may also impose other sanctions against Contractor authorized in the DBE Ordinance, including declaring the Contractor to be irresponsible and ineligible to contract with the City for a period of up to five years or revocation of the Contractor's DBE certification. The Director of HRC will determine the sanctions to be imposed, including the amount of liquidated damages, after investigation pursuant to Administrative Code §14A.13(B).

By entering into this Agreement, Contractor acknowledges and agrees that any liquidated damages assessed by the Director of the HRC shall be payable to City upon demand. Contractor further acknowledges and agrees that any liquidated damages assessed may be withheld from any monies due to Contractor on any contract with City.

Contractor agrees to maintain records necessary for monitoring its compliance with the DBE Ordinance for a period of three years following termination or expiration of this Agreement, and shall make such records available for audit and inspection by the Director of HRC or the Controller upon request.

The City does not contemplate or authorize the use of any subcontractors under this Master Agreement and, therefore, goals are not set.

## 30. Compliance with South Africa Divestment Ordinance; Liquidated Damages

Not applicable.

### 31. MacBride Principles--Northern Ireland

Pursuant to San Francisco Administrative Code §12F.5, the City and County of San Francisco urges companies doing business in Northern Ireland to move towards resolving employment inequities, and encourages such companies to abide by the MacBride Principles. The City and County of San Francisco urges San Francisco companies to do business with corporations that abide by the MacBride Principles. By signing below, the person executing this agreement on behalf of Contractor acknowledges and agrees that he or she has read and understood this section.

### 32. Drug-Free Workplace Policy

Contractor acknowledges that pursuant to the Federal Drug-Free Workplace Act of 1989, the unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance is prohibited on City premises. Contractor agrees that any violation of this prohibition by the contractor, its employees, agents or assigns shall be deemed a material breach of contract.

### 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.
- 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. Requiring Minimum Compensation for Employees

Contractor agrees to comply fully with and be bound by all of the provisions of the Minimum Compensation Ordinance (MCO), as set forth in San Francisco Administrative Code Chapter 12P (Chapter 12P), including the remedies provided, and implementing guidelines and rules. The provisions of Chapter 12P are incorporated herein by reference and made a part of this Agreement as though fully set forth. The text of the MCO is available on the web at [www.sfgov.org/olse](http://www.sfgov.org/olse). Capitalized terms used in this Section and not defined in this Agreement shall have the meanings assigned to such terms in Chapter 12P. Consistent with the requirements of the MCO, Contractor agrees to all of the following:

(a) For each hour worked by a Covered Employee during a Pay Period on work funded under the City contract during the term of this Agreement, Contractor shall provide to the Covered Employee no less than the Minimum Compensation, which includes a minimum hourly wage and compensated and uncompensated time off consistent with the requirements of the MCO.

1. Minimum Hourly Compensation:

For contracts entered into or amended on or after October 14, 2007

For-Profit Rate: \$12.43/hour effective 1/1/13

Non-Profit Rate: \$11.03/hour

2. Paid Days Off:

12 paid days off per year for vacation, sick leave, or personal necessity

The paid days off for part-time employees are prorated on the hours worked

3. Unpaid Days Off:

10 unpaid days off per year

Unpaid days off for part-time employees are prorated based on hours worked

Temporary and casual employees are not eligible for unpaid time off

- (b) Contractor shall not discharge, reduce in compensation, or otherwise discriminate against any employee for complaining to the City with regard to Contractor's compliance or anticipated compliance with the requirements of the MCO, for opposing any practice proscribed by the MCO, for participating in proceedings related to the MCO, or for seeking to assert or enforce any rights under the MCO by any lawful means.
- (c) Contractor understands and agrees that the failure to comply with the requirements of the MCO shall constitute a material breach by Contractor of the terms of this Agreement. The City, acting through the Contracting Department, shall determine whether such a breach has occurred.
- (d) If, within 30 days after receiving written notice of a breach of this Agreement for violating the MCO, Contractor fails to cure such breach or, if such breach cannot reasonably be cured within such period of 30 days, Contractor fails to commence efforts to cure within such period, or thereafter fails diligently to pursue such cure to completion, the City, acting through the Contracting Department, shall have the right to pursue the following rights or remedies and any rights or remedies available under applicable law:
- (1) The right to charge Contractor an amount equal to the difference between the Minimum Compensation and any compensation actually provided to a Covered Employee, together with interest on such amount from the date payment was due at the maximum rate then permitted by law;
  - (2) The right to set off all or any portion of the amount described in Subsection (d)(1) of this Section against amounts due to Contractor under this Agreement;
  - (3) The right to terminate this Agreement in whole or in part;
  - (4) In the event of a breach by Contractor of the covenant referred to in Subsection (b) of this Section, the right to seek reinstatement of the employee or to obtain other appropriate equitable relief; and
  - (5) The right to bar Contractor from entering into future contracts with the City for three (3) years.

Each of the rights provided in this Subsection (d) shall be exercisable individually or in combination with any other rights or remedies available to the City. Any amounts realized by the

City pursuant to this subsection shall be paid to the Covered Employee who failed to receive the required Minimum Compensation.

- (e) Contractor represents and warrants that it is not an entity that was set up, or is being used, for the purpose of evading the intent of the MCO.
- (f) Contractor shall keep itself informed of the current requirements of the MCO, including increases to the hourly gross compensation due Covered Employees under the MCO, and shall provide prompt written notice to all Covered Employees of any increases in compensation, as well as any written communications received by the Contractor from the CITY, which communications are marked to indicate that they are to be distributed to Covered Employees.
- (g) Contractor shall provide reports to the City in accordance with any reporting standards promulgated by the City under the MCO, including reports on subcontractors.
- (h) The Contractor shall provide the City with access to pertinent records after receiving a written request from the City to do so and being provided at least five (5) business days to respond.
- (i) The City may conduct random audits of Contractor. Random audits shall be (i) noticed in advance in writing; (ii) limited to ascertaining whether Covered Employees are paid at least the minimum compensation required by the MCO; (iii) accomplished through an examination of pertinent records at a mutually agreed upon time and location within ten (10) days of the written notice; and (iv) limited to one audit of Contractor every two years for the duration of this Agreement. Nothing in this Agreement is intended to preclude the City from investigating any report of an alleged violation of the MCO.
- (j) Any subcontract entered into by Contractor shall require the subcontractor to comply with the requirements of the MCO and shall contain contractual obligations substantially the same as those set forth in this Section. A subcontract means an agreement between the Contractor and a third party which requires the third party to perform all or a portion of the services covered by this Agreement. Contractor shall notify the Department of Administrative Services when it enters into such a subcontract and shall certify to the Department of Administrative Services that it has notified the subcontractor of the obligations under the MCO and has imposed the requirements of the MCO on the subcontractor through the provisions of the subcontract. It is Contractor's obligation to ensure that any subcontractors of any tier under this Agreement comply with the requirements of the MCO. If any subcontractor under this Agreement fails to comply, City may pursue any of the remedies set forth in this Section against Contractor.
- (k) Each Covered Employee is a third-party beneficiary with respect to the requirements of subsections (a) and (b) of this Section, and may pursue the following remedies in the event of a breach by Contractor of subsections (a) and (b), but only after the Covered Employee has provided the notice, participated in the administrative review hearing, and waited the 21-day period required by the MCO. Contractor understands and agrees that if the Covered Employee prevails in such action, the Covered Employee may be awarded: (1) an amount equal to the difference between the Minimum Compensation and any compensation actually provided to the Covered Employee, together with interest on such amount from the date payment was due at the maximum rate then permitted by law; (2) in the event of a breach by

Contractor of subsections (a) or (b), the right to seek reinstatement or to obtain other appropriate equitable relief; and (3) in the event that the Covered Employee is the prevailing party in any legal action or proceeding against Contractor arising from this Agreement, the right to obtain all costs and expenses, including reasonable attorney's fees and disbursements, incurred by the Covered Employee. Contractor also understands that the MCO provides that if Contractor prevails in any such action, Contractor may be awarded costs and expenses, including reasonable attorney's fees and disbursements, from the Covered Employee if the court determines that the Covered Employee's action was frivolous, vexatious or otherwise an act of bad faith.

- (l) If Contractor is exempt from the MCO when this Agreement is executed because the cumulative amount of agreements with this department for the fiscal year is less than \$25,000 (\$50,000 for nonprofits), but Contractor later enters into an agreement or agreements that cause contractor to exceed that amount in a fiscal year, Contractor shall thereafter be required to comply with the MCO under this Agreement. This obligation arises on the effective date of the agreement that causes the cumulative amount of agreements between the Contractor and this department to exceed \$25,000 (\$50,000 for nonprofits) in the fiscal year.

#### 47. Requiring Health Benefits for Covered Employees

Contractor agrees to comply fully with and be bound by all of the provisions of the Health Care Accountability Ordinance (HCAO), as set forth in San Francisco Administrative Code Chapter 12Q, including the remedies provided, and implementing regulations, as the same may be amended from time to time. The provisions of Chapter 12Q are incorporated by reference and made a part of this Agreement as though fully set forth herein. The text of the HCAO is available on the web at <http://www.sfgov.org/olse>. Capitalized terms used in this Section and not defined in this Agreement shall have the meanings assigned to such terms in Chapter 12Q.

- a. For each Covered Employee, Contractor shall provide the appropriate health benefit set forth in Section 12Q.3 of the HCAO. If Contractor chooses to offer the health plan option, such health plan shall meet the minimum standards set forth by the San Francisco Health Commission.
- b. Notwithstanding the above, if the Contractor is a small business as defined in Section 12Q.3(e) of the HCAO, it shall have no obligation to comply with part (a) above.
- c. Contractor's failure to comply with the HCAO shall constitute a material breach of this agreement. City shall notify Contractor if such a breach has occurred. If, within 30 days after receiving City's written notice of a breach of this Agreement for violating the HCAO, Contractor fails to cure such breach or, if such breach cannot reasonably be cured within such period of 30 days, Contractor fails to commence efforts to cure within such period, or thereafter fails diligently to pursue such cure to completion, City shall have the right to pursue the remedies set forth in 12Q.5.1 and 12Q.5(f)(1-6). Each of these remedies shall be exercisable individually or in combination with any other rights or remedies available to City.
- d. Any Subcontract entered into by Contractor shall require the Subcontractor to comply with the requirements of the HCAO and shall contain contractual obligations substantially the same as those set forth in this Section. Contractor shall notify City's Office of Contract Administration when it enters into such a Subcontract and shall certify to the Office of Contract Administration that it has notified the Subcontractor of the obligations under the HCAO and has imposed the

requirements of the HCAO on Subcontractor through the Subcontract. Each Contractor shall be responsible for its Subcontractors' compliance with this Chapter. If a Subcontractor fails to comply, the City may pursue the remedies set forth in this Section against Contractor based on the Subcontractor's failure to comply, provided that City has first provided Contractor with notice and an opportunity to obtain a cure of the violation.

- e. Contractor shall not discharge, reduce in compensation, or otherwise discriminate against any employee for notifying City with regard to Contractor's noncompliance or anticipated noncompliance with the requirements of the HCAO, for opposing any practice proscribed by the HCAO, for participating in proceedings related to the HCAO, or for seeking to assert or enforce any rights under the HCAO by any lawful means.
- f. Contractor represents and warrants that it is not an entity that was set up, or is being used, for the purpose of evading the intent of the HCAO.
- g. Contractor shall maintain employee and payroll records in compliance with the California Labor Code and Industrial Welfare Commission orders, including the number of hours each employee has worked on the City Contract.
- h. Contractor shall keep itself informed of the current requirements of the HCAO.
- i. Contractor shall provide reports to the City in accordance with any reporting standards promulgated by the City under the HCAO, including reports on Subcontractors and Subtenants, as applicable.
- j. Contractor shall provide City with access to records pertaining to compliance with HCAO after receiving a written request from City to do so and being provided at least ten business days to respond.
- k. Contractor shall allow City to inspect Contractor's job sites and have access to Contractor's employees in order to monitor and determine compliance with HCAO.
- l. City may conduct random audits of Contractor to ascertain its compliance with HCAO. Contractor agrees to cooperate with City when it conducts such audits.
- m. If Contractor is exempt from the HCAO when this Agreement is executed because its amount is less than \$25,000 (\$50,000 for nonprofits), but Contractor later enters into an agreement or agreements that cause Contractor's aggregate amount of all agreements with City to reach \$75,000, all the agreements shall be thereafter subject to the HCAO. This obligation arises on the effective date of the agreement that causes the cumulative amount of agreements between Contractor and the City to be equal to or greater than \$75,000 in the fiscal year.

#### 48. Notification of Limitations on Contributions

This paragraph applies if this contract is in excess of \$50,000 over a 12-month period or less and is for: (1) personal services; or (2) the selling or furnishing of any material, supplies or equipment; or (3) any combination of personal services and the selling or furnishing of any material, supplies or equipment. San Francisco Campaign and Governmental Conduct Code (the "Conduct Code") Section 3.700 *et. seq.*, and San Francisco Ethics Commission Regulations 3.710(a)-1 – 3.730-1, prohibit the public officials who approved this contract from receiving: (1) gifts, honoraria,

emoluments or pecuniary benefits of a value in excess of \$50; (2) any employment for compensation; or (3) any campaign contributions for any elective office for a period of up to six years from individuals and entities who are “public benefit recipients” of the contract. Public benefit recipients of the contract are: (1) the individual, corporation, firm, partnership, association, or other person or entity that is a party to the contract; (2) an individual or entity that has a direct 10% equity, or direct 10% participation, or direct 10% revenue interest in that party at the time the public benefit is awarded; or (3) an individual who is a trustee, director, partner or officer of the contracting party at the time the public benefit is awarded.

Contractor understands that any public official who approved this contract may not accept campaign contributions, gifts, or future employment from Contractor except as provided under the Conduct Code. Contractor agrees to notify any other individuals or entities that may be deemed “public benefit recipients” under the Conduct Code because of this contract. Upon request, Contractor agrees to furnish, before this contract is entered into, such information as any public official approving this contract may require in order to ensure such official’s compliance with the Conduct Code. Upon request, the City agrees to provide, before this contract is entered into, Contractor with a list of public officials who, under the Conduct Code, approved this contract. Failure of any public official who approved this contract to abide by the Conduct Code shall not constitute a breach by either the City or Contractor of this contract. Notwithstanding anything to the contrary in this contract, neither party shall have the right to terminate the contract due to any failure by the other party to provide the information described in this paragraph.

#### 49. Prohibiting Use of City Funds for Political Activity

No funds appropriated by the City and County of San Francisco for any contract, grant agreement or loan agreement may be expended for participating in, supporting, or attempting to influence a political campaign for any candidate or measure. Recipients of city funds will cooperate in audits conducted by the Controller to verify that no City funds were used for political purposes.

In accordance with San Francisco Administrative Code Chapter 12.G, Contractor may not participate in, support, or attempt to influence any political campaign for a candidate or for a ballot measure (collectively, “Political Activity”) in the performance of the services provided under this Agreement. Contractor agrees to comply with San Francisco Administrative Code Chapter 12.G and any implementing rules and regulations promulgated by the City’s Controller. The terms and provisions of Chapter 12.G are incorporated herein by this reference. In the event Contractor violates the provisions of this section, the City may, in addition to any other rights or remedies available hereunder, (i) terminate this Agreement, and (ii) prohibit Contractor from bidding on or receiving any new City contract for a period of two (2) years.

#### 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 acknowledges that, pursuant to the Americans with Disabilities Act (ADA), programs, services and other activities provided by a public entity to the public, whether directly or through a contractor, must be accessible to the disabled public. Contractor shall provide the services

specified in this Agreement in a manner that complies with the ADA and any and all other applicable federal, state and local disability rights legislation. Contractor agrees not to discriminate against disabled persons in the provision of services, benefits or activities provided under this Agreement and further agrees that any violation of this prohibition on the part of Contractor, its employees, agents or assigns will constitute a material breach of this Agreement.

## 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.

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

**CITY**

Approved:

Edward D. Reiskin.  
Director

**CONTRACTOR**

Name: Otis Elevator Company

Address: 444 Spear Street, Suite 100

City: San Francisco      State: CA    Zip:  
94105

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.

By:

Name:

Title:  
Telephone No.

Federal Employer Number:

Approved as to Form:  
Dennis J. Herrera  
City Attorney

John I. Kennedy  
Deputy City Attorney

## 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 Rosa Rankin at (415) 401-3107 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 Rosa Rankin at (415) 401-3107.

#### 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 700 Pennsylvania, Building C, San Francisco, California. To obtain a copy of plans and specifications contact Rosa Rankin at (415) 401-3107.

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 Rosa Rankin at (415) 401-3107.

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 Rosa Rankin at (415) 401-3107 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

**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 1st day of March, 2013, 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**

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 specified in Appendix A and Appendix B.

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 March 1, 2013 through February 28, 2018.

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 30<sup>th</sup> 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 30<sup>th</sup> day of the immediately preceding month. In no event shall the amount of this contract exceed dollars **\$1,419,506.40**.

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 to the following address:

Rosa Rankin  
Contracts Administrator  
MOW – Infrastructure Maintenance  
700 Pennsylvania Street  
San Francisco, California 94107

- 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.
- 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 and served by depositing same in the United States Post Office, postage prepaid and registered as follows:

To City:  
Municipal Transportation Agency  
Contracts Administrator, MOW-Infrastructure Maintenance  
700 Pennsylvania Avenue

San Francisco, CA 94107

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.

### 30. Disadvantaged Business Enterprise Utilization; Liquidated Damages

#### a. The DBE Ordinance

Contractor, shall comply with all the requirements of the Disadvantaged Business Enterprise Ordinance set forth in Chapter 14A of the San Francisco Administrative Code as it now exists or as it may be amended in the future (collectively the “DBE Ordinance”), provided such amendments do not materially increase Contractor's obligations or liabilities, or materially diminish Contractor's rights, under this Agreement. Such provisions of the DBE Ordinance are incorporated by reference and made a part of this Agreement as though fully set forth in this section. Contractor’s willful failure to comply with any applicable provision of the DBE Ordinance is a material breach of Contractor's obligations under this Agreement and shall entitle City, subject to any applicable notice and cure provisions set forth in this Agreement, to exercise any of the remedies provided for under this Agreement, under the DBE Ordinance or otherwise available at law or in equity, which remedies shall be cumulative unless this Agreement expressly provides that any remedy is exclusive. In addition, Contractor shall comply fully with all other applicable local, state and federal laws prohibiting discrimination and requiring equal opportunity in contracting, including subcontracting.

#### b. Compliance and Enforcement

If Contractor willfully fails to comply with any of the provisions of the DBE Ordinance, the rules and regulations implementing the DBE Ordinance, or the provisions of this Agreement pertaining to DBE participation, Contractor shall be liable for liquidated damages in an amount equal to Contractor’s net profit on this Agreement, or 10% of the total amount of this Agreement, or \$1,000, whichever is greatest. The Director of the City’s Human Rights Commission or any other public official authorized to enforce the DBE Ordinance (separately and collectively, the “Director of HRC”) may also impose other sanctions against Contractor authorized in the DBE Ordinance, including declaring the Contractor to be irresponsible and ineligible to contract with the City for a period of up to five years or revocation of the Contractor’s DBE certification. The Director of HRC will determine the sanctions to be imposed, including the amount of liquidated damages, after investigation pursuant to Administrative Code §14A.13(B).

By entering into this Agreement, Contractor acknowledges and agrees that any liquidated damages assessed by the Director of the HRC shall be payable to City upon demand. Contractor further acknowledges and agrees that any liquidated damages assessed may be withheld from any monies due to Contractor on any contract with City.

Contractor agrees to maintain records necessary for monitoring its compliance with the DBE Ordinance for a period of three years following termination or expiration of this Agreement, and shall make such records available for audit and inspection by the Director of HRC or the Controller upon request.

The City does not contemplate or authorize the use of any subcontractors under this Master Agreement and, therefore, goals are not set.

### 30. Compliance with South Africa Divestment Ordinance; Liquidated Damages

Not applicable.

### 31. MacBride Principles--Northern Ireland

Pursuant to San Francisco Administrative Code §12F.5, the City and County of San Francisco urges companies doing business in Northern Ireland to move towards resolving employment inequities, and encourages such companies to abide by the MacBride Principles. The City and County of San Francisco urges San Francisco companies to do business with corporations that abide by the MacBride Principles. By signing below, the person executing this agreement on behalf of Contractor acknowledges and agrees that he or she has read and understood this section.

### 32. Drug-Free Workplace Policy

Contractor acknowledges that pursuant to the Federal Drug-Free Workplace Act of 1989, the unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance is prohibited on City premises. Contractor agrees that any violation of this prohibition by the contractor, its employees, agents or assigns shall be deemed a material breach of contract.

### 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.
- l. 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. Requiring Minimum Compensation for Employees

Contractor agrees to comply fully with and be bound by all of the provisions of the Minimum Compensation Ordinance (MCO), as set forth in San Francisco Administrative Code Chapter 12P (Chapter 12P), including the remedies provided, and implementing guidelines and rules. The provisions of Chapter 12P are incorporated herein by reference and made a part of this Agreement as though fully set forth. The text of the MCO is available on the web at [www.sfgov.org/olse](http://www.sfgov.org/olse). Capitalized terms used in this Section and not defined in this Agreement shall have the meanings assigned to such terms in Chapter 12P. Consistent with the requirements of the MCO, Contractor agrees to all of the following:

(a) For each hour worked by a Covered Employee during a Pay Period on work funded under the City contract during the term of this Agreement, Contractor shall provide to the Covered Employee no less than the Minimum Compensation, which includes a minimum hourly wage and compensated and uncompensated time off consistent with the requirements of the MCO.

1. Minimum Hourly Compensation:

For contracts entered into or amended on or after October 14, 2007

For-Profit Rate: \$12.43/hour effective 1/1/13

Non-Profit Rate: \$11.03/hour

2. Paid Days Off:

12 paid days off per year for vacation, sick leave, or personal necessity

The paid days off for part-time employees are prorated on the hours worked

3. Unpaid Days Off:

10 unpaid days off per year

Unpaid days off for part-time employees are prorated based on hours worked

Temporary and casual employees are not eligible for unpaid time off

- (b) Contractor shall not discharge, reduce in compensation, or otherwise discriminate against any employee for complaining to the City with regard to Contractor's compliance or anticipated compliance with the requirements of the MCO, for opposing any practice proscribed by the MCO, for participating in proceedings related to the MCO, or for seeking to assert or enforce any rights under the MCO by any lawful means.
- (c) Contractor understands and agrees that the failure to comply with the requirements of the MCO shall constitute a material breach by Contractor of the terms of this Agreement. The City, acting through the Contracting Department, shall determine whether such a breach has occurred.
- (d) If, within 30 days after receiving written notice of a breach of this Agreement for violating the MCO, Contractor fails to cure such breach or, if such breach cannot reasonably be cured within such period of 30 days, Contractor fails to commence efforts to cure within such period, or thereafter fails diligently to pursue such cure to completion, the City, acting through the Contracting Department, shall have the right to pursue the following rights or remedies and any rights or remedies available under applicable law:
- (6) The right to charge Contractor an amount equal to the difference between the Minimum Compensation and any compensation actually provided to a Covered Employee, together with interest on such amount from the date payment was due at the maximum rate then permitted by law;
  - (7) The right to set off all or any portion of the amount described in Subsection (d)(1) of this Section against amounts due to Contractor under this Agreement;
  - (8) The right to terminate this Agreement in whole or in part;
  - (9) In the event of a breach by Contractor of the covenant referred to in Subsection (b) of this Section, the right to seek reinstatement of the employee or to obtain other appropriate equitable relief; and
  - (10) The right to bar Contractor from entering into future contracts with the City for three (3) years.

Each of the rights provided in this Subsection (d) shall be exercisable individually or in combination with any other rights or remedies available to the City. Any amounts realized by the City pursuant to this subsection shall be paid to the Covered Employee who failed to receive the required Minimum Compensation.

- (e) Contractor represents and warrants that it is not an entity that was set up, or is being used, for the purpose of evading the intent of the MCO.
- (f) Contractor shall keep itself informed of the current requirements of the MCO, including increases to the hourly gross compensation due Covered Employees under the MCO, and shall provide prompt written notice to all Covered Employees of any increases in compensation, as well as any written communications received by the Contractor from the CITY, which communications are marked to indicate that they are to be distributed to Covered Employees.
- (g) Contractor shall provide reports to the City in accordance with any reporting standards promulgated by the City under the MCO, including reports on subcontractors.
- (h) The Contractor shall provide the City with access to pertinent records after receiving a written request from the City to do so and being provided at least five (5) business days to respond.
- (i) The City may conduct random audits of Contractor. Random audits shall be (i) noticed in advance in writing; (ii) limited to ascertaining whether Covered Employees are paid at least the minimum compensation required by the MCO; (iii) accomplished through an examination of pertinent records at a mutually agreed upon time and location within ten (10) days of the written notice; and (iv) limited to one audit of Contractor every two years for the duration of this Agreement. Nothing in this Agreement is intended to preclude the City from investigating any report of an alleged violation of the MCO.
- (j) Any subcontract entered into by Contractor shall require the subcontractor to comply with the requirements of the MCO and shall contain contractual obligations substantially the same as those set forth in this Section. A subcontract means an agreement between the Contractor and a third party which requires the third party to perform all or a portion of the services covered by this Agreement. Contractor shall notify the Department of Administrative Services when it enters into such a subcontract and shall certify to the Department of Administrative Services that it has notified the subcontractor of the obligations under the MCO and has imposed the requirements of the MCO on the subcontractor through the provisions of the subcontract. It is Contractor's obligation to ensure that any subcontractors of any tier under this Agreement comply with the requirements of the MCO. If any subcontractor under this Agreement fails to comply, City may pursue any of the remedies set forth in this Section against Contractor.
- (k) Each Covered Employee is a third-party beneficiary with respect to the requirements of subsections (a) and (b) of this Section, and may pursue the following remedies in the event of a breach by Contractor of subsections (a) and (b), but only after the Covered Employee has provided the notice, participated in the administrative review hearing, and waited the 21-day period required by the MCO. Contractor understands and agrees that if the Covered Employee prevails in such action, the Covered Employee may be awarded: (1) an amount equal to the difference between the Minimum Compensation and any compensation actually

provided to the Covered Employee, together with interest on such amount from the date payment was due at the maximum rate then permitted by law; (2) in the event of a breach by Contractor of subsections (a) or (b), the right to seek reinstatement or to obtain other appropriate equitable relief; and (3) in the event that the Covered Employee is the prevailing party in any legal action or proceeding against Contractor arising from this Agreement, the right to obtain all costs and expenses, including reasonable attorney's fees and disbursements, incurred by the Covered Employee. Contractor also understands that the MCO provides that if Contractor prevails in any such action, Contractor may be awarded costs and expenses, including reasonable attorney's fees and disbursements, from the Covered Employee if the court determines that the Covered Employee's action was frivolous, vexatious or otherwise an act of bad faith.

- (l) If Contractor is exempt from the MCO when this Agreement is executed because the cumulative amount of agreements with this department for the fiscal year is less than \$25,000 (\$50,000 for nonprofits), but Contractor later enters into an agreement or agreements that cause contractor to exceed that amount in a fiscal year, Contractor shall thereafter be required to comply with the MCO under this Agreement. This obligation arises on the effective date of the agreement that causes the cumulative amount of agreements between the Contractor and this department to exceed \$25,000 (\$50,000 for nonprofits) in the fiscal year.

#### 47. Requiring Health Benefits for Covered Employees

Contractor agrees to comply fully with and be bound by all of the provisions of the Health Care Accountability Ordinance (HCAO), as set forth in San Francisco Administrative Code Chapter 12Q, including the remedies provided, and implementing regulations, as the same may be amended from time to time. The provisions of Chapter 12Q are incorporated by reference and made a part of this Agreement as though fully set forth herein. The text of the HCAO is available on the web at <http://www.sfgov.org/olse>. Capitalized terms used in this Section and not defined in this Agreement shall have the meanings assigned to such terms in Chapter 12Q.

- a. For each Covered Employee, Contractor shall provide the appropriate health benefit set forth in Section 12Q.3 of the HCAO. If Contractor chooses to offer the health plan option, such health plan shall meet the minimum standards set forth by the San Francisco Health Commission.
- b. Notwithstanding the above, if the Contractor is a small business as defined in Section 12Q.3(e) of the HCAO, it shall have no obligation to comply with part (a) above.
- c. Contractor's failure to comply with the HCAO shall constitute a material breach of this agreement. City shall notify Contractor if such a breach has occurred. If, within 30 days after receiving City's written notice of a breach of this Agreement for violating the HCAO, Contractor fails to cure such breach or, if such breach cannot reasonably be cured within such period of 30 days, Contractor fails to commence efforts to cure within such period, or thereafter fails diligently to pursue such cure to completion, City shall have the right to pursue the remedies set forth in 12Q.5.1 and 12Q.5(f)(1-6). Each of these remedies shall be exercisable individually or in combination with any other rights or remedies available to City.

- d. Any Subcontract entered into by Contractor shall require the Subcontractor to comply with the requirements of the HCAO and shall contain contractual obligations substantially the same as those set forth in this Section. Contractor shall notify City's Office of Contract Administration when it enters into such a Subcontract and shall certify to the Office of Contract Administration that it has notified the Subcontractor of the obligations under the HCAO and has imposed the requirements of the HCAO on Subcontractor through the Subcontract. Each Contractor shall be responsible for its Subcontractors' compliance with this Chapter. If a Subcontractor fails to comply, the City may pursue the remedies set forth in this Section against Contractor based on the Subcontractor's failure to comply, provided that City has first provided Contractor with notice and an opportunity to obtain a cure of the violation.
- e. Contractor shall not discharge, reduce in compensation, or otherwise discriminate against any employee for notifying City with regard to Contractor's noncompliance or anticipated noncompliance with the requirements of the HCAO, for opposing any practice proscribed by the HCAO, for participating in proceedings related to the HCAO, or for seeking to assert or enforce any rights under the HCAO by any lawful means.
- f. Contractor represents and warrants that it is not an entity that was set up, or is being used, for the purpose of evading the intent of the HCAO.
- g. Contractor shall maintain employee and payroll records in compliance with the California Labor Code and Industrial Welfare Commission orders, including the number of hours each employee has worked on the City Contract.
- h. Contractor shall keep itself informed of the current requirements of the HCAO.
- i. Contractor shall provide reports to the City in accordance with any reporting standards promulgated by the City under the HCAO, including reports on Subcontractors and Subtenants, as applicable.
- j. Contractor shall provide City with access to records pertaining to compliance with HCAO after receiving a written request from City to do so and being provided at least ten business days to respond.
- k. Contractor shall allow City to inspect Contractor's job sites and have access to Contractor's employees in order to monitor and determine compliance with HCAO.
- l. City may conduct random audits of Contractor to ascertain its compliance with HCAO. Contractor agrees to cooperate with City when it conducts such audits.
- m. If Contractor is exempt from the HCAO when this Agreement is executed because its amount is less than \$25,000 (\$50,000 for nonprofits), but Contractor later enters into an agreement or agreements that cause Contractor's aggregate amount of all agreements with City to reach \$75,000, all the agreements shall be thereafter subject to the HCAO. This obligation arises on the effective date of the agreement that causes the cumulative amount of agreements between Contractor and the City to be equal to or greater than \$75,000 in the fiscal year.

#### 48. Notification of Limitations on Contributions

This paragraph applies if this contract is in excess of \$50,000 over a 12-month period or less and is for: (1) personal services; or (2) the selling or furnishing of any material, supplies or equipment; or (3) any combination of personal services and the selling or furnishing of any material, supplies or equipment. San Francisco Campaign and Governmental Conduct Code (the "Conduct Code") Section 3.700 *et. seq.*, and San Francisco Ethics Commission Regulations 3.710(a)-1 – 3.730-1, prohibit the public officials who approved this contract from receiving: (1) gifts, honoraria, emoluments or pecuniary benefits of a value in excess of \$50; (2) any employment for compensation; or (3) any campaign contributions for any elective office for a period of up to six years from individuals and entities who are "public benefit recipients" of the contract. Public benefit recipients of the contract are: (1) the individual, corporation, firm, partnership, association, or other person or entity that is a party to the contract; (2) an individual or entity that has a direct 10% equity, or direct 10% participation, or direct 10% revenue interest in that party at the time the public benefit is awarded; or (3) an individual who is a trustee, director, partner or officer of the contracting party at the time the public benefit is awarded.

Contractor understands that any public official who approved this contract may not accept campaign contributions, gifts, or future employment from Contractor except as provided under the Conduct Code. Contractor agrees to notify any other individuals or entities that may be deemed "public benefit recipients" under the Conduct Code because of this contract. Upon request, Contractor agrees to furnish, before this contract is entered into, such information as any public official approving this contract may require in order to ensure such official's compliance with the Conduct Code. Upon request, the City agrees to provide, before this contract is entered into, Contractor with a list of public officials who, under the Conduct Code, approved this contract. Failure of any public official who approved this contract to abide by the Conduct Code shall not constitute a breach by either the City or Contractor of this contract. Notwithstanding anything to the contrary in this contract, neither party shall have the right to terminate the contract due to any failure by the other party to provide the information described in this paragraph.

#### 49. Prohibiting Use of City Funds for Political Activity

No funds appropriated by the City and County of San Francisco for any contract, grant agreement or loan agreement may be expended for participating in, supporting, or attempting to influence a political campaign for any candidate or measure. Recipients of city funds will cooperate in audits conducted by the Controller to verify that no City funds were used for political purposes.

In accordance with San Francisco Administrative Code Chapter 12.G, Contractor may not participate in, support, or attempt to influence any political campaign for a candidate or for a ballot measure (collectively, "Political Activity") in the performance of the services provided under this Agreement. Contractor agrees to comply with San Francisco Administrative Code Chapter 12.G and any implementing rules and regulations promulgated by the City's Controller. The terms and provisions of Chapter 12.G are incorporated herein by this reference. In the event Contractor violates the provisions of this section, the City may, in addition to any other rights or remedies available hereunder, (i) terminate this Agreement, and (ii) prohibit Contractor from bidding on or receiving any new City contract for a period of two (2) years.

#### 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 acknowledges that, pursuant to the Americans with Disabilities Act (ADA), programs, services and other activities provided by a public entity to the public, whether directly or through a contractor, must be accessible to the disabled public. Contractor shall provide the services specified in this Agreement in a manner that complies with the ADA and any and all other applicable federal, state and local disability rights legislation. Contractor agrees not to discriminate against disabled persons in the provision of services, benefits or activities provided under this Agreement and further agrees that any violation of this prohibition on the part of Contractor, its employees, agents or assigns will constitute a material breach of this Agreement.

#### 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.

## 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.

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

**CITY**

Approved:

Edward D. Reiskin.  
Director

---

**CONTRACTOR**

Name: KONE Inc.

Address: 15021 Wicks Boulevard

City: San Leandro State: CA Zip: 94577

---

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.

By:

Name:

Title:

Phone Number:

Federal Employer Number:

---

---

Approved as to Form:  
Dennis J. Herrera  
City Attorney

John I. Kennedy  
Deputy City Attorney

## 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 Rosa Rankin at (415) 401-3107 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 Rosa Rankin at (415) 401-3107.

#### 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 700 Pennsylvania, Building C, San Francisco, California. To obtain a copy of plans and specifications contact Rosa Rankin at (415) 401-3107.

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 Rosa Rankin at (415) 401-3107.

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 Rosa Rankin at (415) 401-3107 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

**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 1st day of March, 2013, 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 Corp.
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 specified in Appendix A and Appendix B.

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 March 1, 2013 through February 28, 2018.

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 30<sup>th</sup> 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 30<sup>th</sup> day of the immediately preceding month. In no event shall the amount of this contract exceed dollars **\$2,257,611.00** .

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 to the following address:

Rosa Rankin  
Contracts Administrator  
MOW – Infrastructure Maintenance  
700 Pennsylvania Street  
San Francisco, California 94107

- 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.



- 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 and served by depositing same in the United States Post Office, postage prepaid and registered as follows:

To City:  
Municipal Transportation Agency  
Contracts Administrator  
MOW-Infrastructure Maintenance

700 Pennsylvania Avenue  
San Francisco, CA 94107

To Contractor:  
Schindler Inc.  
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.

### 31. Disadvantaged Business Enterprise Utilization; Liquidated Damages

#### a. The DBE Ordinance

Contractor, shall comply with all the requirements of the Disadvantaged Business Enterprise Ordinance set forth in Chapter 14A of the San Francisco Administrative Code as it now exists or as it may be amended in the future (collectively the "DBE Ordinance"), provided such amendments do not materially increase Contractor's obligations or liabilities, or materially diminish Contractor's rights, under this Agreement. Such provisions of the DBE Ordinance are incorporated by reference and made a part of this Agreement as though fully set forth in this section. Contractor's willful failure to comply with any applicable provision of the DBE Ordinance is a material breach of Contractor's obligations under this Agreement and shall entitle City, subject to any applicable notice and cure provisions set forth in this Agreement, to exercise any of the remedies provided for under this Agreement, under the DBE Ordinance or otherwise available at law or in equity, which remedies shall be cumulative unless this Agreement expressly provides that any remedy is exclusive. In addition, Contractor shall comply fully with all other applicable local, state and federal laws prohibiting discrimination and requiring equal opportunity in contracting, including subcontracting.

#### b. Compliance and Enforcement

If Contractor willfully fails to comply with any of the provisions of the DBE Ordinance, the rules and regulations implementing the DBE Ordinance, or the provisions of this Agreement pertaining to DBE participation, Contractor shall be liable for liquidated damages in an amount equal to Contractor's net profit on this Agreement, or 10% of the total amount of this Agreement, or \$1,000, whichever is greatest. The Director of the City's Human Rights Commission or any other public official authorized to enforce the DBE Ordinance (separately and collectively, the "Director of HRC") may also impose other sanctions against Contractor authorized in the DBE Ordinance, including declaring the Contractor to be irresponsible and ineligible to contract with the City for a period of up to five years or revocation of the Contractor's DBE certification. The Director of HRC will determine the sanctions to be imposed, including the amount of liquidated damages, after investigation pursuant to Administrative Code §14A.13(B).

By entering into this Agreement, Contractor acknowledges and agrees that any liquidated damages assessed by the Director of the HRC shall be payable to City upon demand. Contractor further acknowledges and agrees that any liquidated damages assessed may be withheld from any monies due to Contractor on any contract with City.

Contractor agrees to maintain records necessary for monitoring its compliance with the DBE Ordinance for a period of three years following termination or expiration of this Agreement, and shall make such records available for audit and inspection by the Director of HRC or the Controller upon request.

The City does not contemplate or authorize the use of any subcontractors under this Master Agreement and, therefore, goals are not set.

### 30. Compliance with South Africa Divestment Ordinance; Liquidated Damages

Not applicable.

### 31. MacBride Principles--Northern Ireland

Pursuant to San Francisco Administrative Code §12F.5, the City and County of San Francisco urges companies doing business in Northern Ireland to move towards resolving employment inequities, and encourages such companies to abide by the MacBride Principles. The City and County of San Francisco urges San Francisco companies to do business with corporations that abide by the MacBride Principles. By signing below, the person executing this agreement on behalf of Contractor acknowledges and agrees that he or she has read and understood this section.

### 32. Drug-Free Workplace Policy

Contractor acknowledges that pursuant to the Federal Drug-Free Workplace Act of 1989, the unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance is prohibited on City premises. Contractor agrees that any violation of this prohibition by the contractor, its employees, agents or assigns shall be deemed a material breach of contract.

### 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.
- m. 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. Requiring Minimum Compensation for Employees

Contractor agrees to comply fully with and be bound by all of the provisions of the Minimum Compensation Ordinance (MCO), as set forth in San Francisco Administrative Code Chapter 12P (Chapter 12P), including the remedies provided, and implementing guidelines and rules. The provisions of Chapter 12P are incorporated herein by reference and made a part of this Agreement as though fully set forth. The text of the MCO is available on the web at [www.sfgov.org/olse](http://www.sfgov.org/olse). Capitalized terms used in this Section and not defined in this Agreement shall have the meanings assigned to such terms in Chapter 12P. Consistent with the requirements of the MCO, Contractor agrees to all of the following:

(a) For each hour worked by a Covered Employee during a Pay Period on work funded under the City contract during the term of this Agreement, Contractor shall provide to the Covered Employee no less than the Minimum Compensation, which includes a minimum hourly wage and compensated and uncompensated time off consistent with the requirements of the MCO.

1. Minimum Hourly Compensation:

For contracts entered into or amended on or after October 14, 2007

For-Profit Rate: \$12.43/hour effective 1/1/13

Non-Profit Rate: \$11.03/hour

2. Paid Days Off:

12 paid days off per year for vacation, sick leave, or personal necessity

The paid days off for part-time employees are prorated on the hours worked

3. Unpaid Days Off:

10 unpaid days off per year

Unpaid days off for part-time employees are prorated based on hours worked

Temporary and casual employees are not eligible for unpaid time off

- (b) Contractor shall not discharge, reduce in compensation, or otherwise discriminate against any employee for complaining to the City with regard to Contractor's compliance or anticipated compliance with the requirements of the MCO, for opposing any practice proscribed by the MCO, for participating in proceedings related to the MCO, or for seeking to assert or enforce any rights under the MCO by any lawful means.
- (c) Contractor understands and agrees that the failure to comply with the requirements of the MCO shall constitute a material breach by Contractor of the terms of this Agreement. The City, acting through the Contracting Department, shall determine whether such a breach has occurred.
- (d) If, within 30 days after receiving written notice of a breach of this Agreement for violating the MCO, Contractor fails to cure such breach or, if such breach cannot reasonably be cured within such period of 30 days, Contractor fails to commence efforts to cure within such period, or thereafter fails diligently to pursue such cure to completion, the City, acting through the Contracting Department, shall have the right to pursue the following rights or remedies and any rights or remedies available under applicable law:
- (11) The right to charge Contractor an amount equal to the difference between the Minimum Compensation and any compensation actually provided to a Covered Employee, together with interest on such amount from the date payment was due at the maximum rate then permitted by law;
- (12) The right to set off all or any portion of the amount described in Subsection (d)(1) of this Section against amounts due to Contractor under this Agreement;
- (13) The right to terminate this Agreement in whole or in part;
- (14) In the event of a breach by Contractor of the covenant referred to in Subsection (b) of this Section, the right to seek reinstatement of the employee or to obtain other appropriate equitable relief; and
- (15) The right to bar Contractor from entering into future contracts with the City for three (3) years.

Each of the rights provided in this Subsection (d) shall be exercisable individually or in combination with any other rights or remedies available to the City. Any amounts realized by the City pursuant to this subsection shall be paid to the Covered Employee who failed to receive the required Minimum Compensation.

- (e) Contractor represents and warrants that it is not an entity that was set up, or is being used, for the purpose of evading the intent of the MCO.
- (f) Contractor shall keep itself informed of the current requirements of the MCO, including increases to the hourly gross compensation due Covered Employees under the MCO, and shall provide prompt written notice to all Covered Employees of any increases in compensation, as well as any written communications received by the Contractor from the CITY, which communications are marked to indicate that they are to be distributed to Covered Employees.
- (g) Contractor shall provide reports to the City in accordance with any reporting standards promulgated by the City under the MCO, including reports on subcontractors.
- (h) The Contractor shall provide the City with access to pertinent records after receiving a written request from the City to do so and being provided at least five (5) business days to respond.
- (i) The City may conduct random audits of Contractor. Random audits shall be (i) noticed in advance in writing; (ii) limited to ascertaining whether Covered Employees are paid at least the minimum compensation required by the MCO; (iii) accomplished through an examination of pertinent records at a mutually agreed upon time and location within ten (10) days of the written notice; and (iv) limited to one audit of Contractor every two years for the duration of this Agreement. Nothing in this Agreement is intended to preclude the City from investigating any report of an alleged violation of the MCO.
- (j) Any subcontract entered into by Contractor shall require the subcontractor to comply with the requirements of the MCO and shall contain contractual obligations substantially the same as those set forth in this Section. A subcontract means an agreement between the Contractor and a third party which requires the third party to perform all or a portion of the services covered by this Agreement. Contractor shall notify the Department of Administrative Services when it enters into such a subcontract and shall certify to the Department of Administrative Services that it has notified the subcontractor of the obligations under the MCO and has imposed the requirements of the MCO on the subcontractor through the provisions of the subcontract. It is Contractor's obligation to ensure that any subcontractors of any tier under this Agreement comply with the requirements of the MCO. If any subcontractor under this Agreement fails to comply, City may pursue any of the remedies set forth in this Section against Contractor.
- (l) Each Covered Employee is a third-party beneficiary with respect to the requirements of subsections (a) and (b) of this Section, and may pursue the following remedies in the event of a breach by Contractor of subsections (a) and (b), but only after the Covered Employee has provided the notice, participated in the administrative review hearing, and waited the 21-day period required by the MCO. Contractor understands and agrees that if the Covered Employee prevails in such action, the Covered Employee may be awarded: (1) an amount equal to the difference between the Minimum Compensation and any compensation actually

provided to the Covered Employee, together with interest on such amount from the date payment was due at the maximum rate then permitted by law; (2) in the event of a breach by Contractor of subsections (a) or (b), the right to seek reinstatement or to obtain other appropriate equitable relief; and (3) in the event that the Covered Employee is the prevailing party in any legal action or proceeding against Contractor arising from this Agreement, the right to obtain all costs and expenses, including reasonable attorney's fees and disbursements, incurred by the Covered Employee. Contractor also understands that the MCO provides that if Contractor prevails in any such action, Contractor may be awarded costs and expenses, including reasonable attorney's fees and disbursements, from the Covered Employee if the court determines that the Covered Employee's action was frivolous, vexatious or otherwise an act of bad faith.

- (l) If Contractor is exempt from the MCO when this Agreement is executed because the cumulative amount of agreements with this department for the fiscal year is less than \$25,000 (\$50,000 for nonprofits), but Contractor later enters into an agreement or agreements that cause contractor to exceed that amount in a fiscal year, Contractor shall thereafter be required to comply with the MCO under this Agreement. This obligation arises on the effective date of the agreement that causes the cumulative amount of agreements between the Contractor and this department to exceed \$25,000 (\$50,000 for nonprofits) in the fiscal year.

#### 47. Requiring Health Benefits for Covered Employees

Contractor agrees to comply fully with and be bound by all of the provisions of the Health Care Accountability Ordinance (HCAO), as set forth in San Francisco Administrative Code Chapter 12Q, including the remedies provided, and implementing regulations, as the same may be amended from time to time. The provisions of Chapter 12Q are incorporated by reference and made a part of this Agreement as though fully set forth herein. The text of the HCAO is available on the web at <http://www.sfgov.org/olse>. Capitalized terms used in this Section and not defined in this Agreement shall have the meanings assigned to such terms in Chapter 12Q.

- a. For each Covered Employee, Contractor shall provide the appropriate health benefit set forth in Section 12Q.3 of the HCAO. If Contractor chooses to offer the health plan option, such health plan shall meet the minimum standards set forth by the San Francisco Health Commission.
- b. Notwithstanding the above, if the Contractor is a small business as defined in Section 12Q.3(e) of the HCAO, it shall have no obligation to comply with part (a) above.
- c. Contractor's failure to comply with the HCAO shall constitute a material breach of this agreement. City shall notify Contractor if such a breach has occurred. If, within 30 days after receiving City's written notice of a breach of this Agreement for violating the HCAO, Contractor fails to cure such breach or, if such breach cannot reasonably be cured within such period of 30 days, Contractor fails to commence efforts to cure within such period, or thereafter fails diligently to pursue such cure to completion, City shall have the right to pursue the remedies set forth in 12Q.5.1 and 12Q.5(f)(1-6). Each of these remedies shall be exercisable individually or in combination with any other rights or remedies available to City.
- d. Any Subcontract entered into by Contractor shall require the Subcontractor to comply with the requirements of the HCAO and shall contain contractual obligations substantially the same as those set forth in this Section. Contractor shall notify City's Office of Contract Administration when

it enters into such a Subcontract and shall certify to the Office of Contract Administration that it has notified the Subcontractor of the obligations under the HCAO and has imposed the requirements of the HCAO on Subcontractor through the Subcontract. Each Contractor shall be responsible for its Subcontractors' compliance with this Chapter. If a Subcontractor fails to comply, the City may pursue the remedies set forth in this Section against Contractor based on the Subcontractor's failure to comply, provided that City has first provided Contractor with notice and an opportunity to obtain a cure of the violation.

- e. Contractor shall not discharge, reduce in compensation, or otherwise discriminate against any employee for notifying City with regard to Contractor's noncompliance or anticipated noncompliance with the requirements of the HCAO, for opposing any practice proscribed by the HCAO, for participating in proceedings related to the HCAO, or for seeking to assert or enforce any rights under the HCAO by any lawful means.
- n. Contractor represents and warrants that it is not an entity that was set up, or is being used, for the purpose of evading the intent of the HCAO.
- o. Contractor shall maintain employee and payroll records in compliance with the California Labor Code and Industrial Welfare Commission orders, including the number of hours each employee has worked on the City Contract.
- p. Contractor shall keep itself informed of the current requirements of the HCAO.
- q. Contractor shall provide reports to the City in accordance with any reporting standards promulgated by the City under the HCAO, including reports on Subcontractors and Subtenants, as applicable.
- r. Contractor shall provide City with access to records pertaining to compliance with HCAO after receiving a written request from City to do so and being provided at least ten business days to respond.
- s. Contractor shall allow City to inspect Contractor's job sites and have access to Contractor's employees in order to monitor and determine compliance with HCAO.
- l. City may conduct random audits of Contractor to ascertain its compliance with HCAO. Contractor agrees to cooperate with City when it conducts such audits.
- m. If Contractor is exempt from the HCAO when this Agreement is executed because its amount is less than \$25,000 (\$50,000 for nonprofits), but Contractor later enters into an agreement or agreements that cause Contractor's aggregate amount of all agreements with City to reach \$75,000, all the agreements shall be thereafter subject to the HCAO. This obligation arises on the effective date of the agreement that causes the cumulative amount of agreements between Contractor and the City to be equal to or greater than \$75,000 in the fiscal year.

#### 48. Notification of Limitations on Contributions

This paragraph applies if this contract is in excess of \$50,000 over a 12-month period or less and is for: (1) personal services; or (2) the selling or furnishing of any material, supplies or equipment; or (3) any combination of personal services and the selling or furnishing of any material, supplies or equipment. San Francisco Campaign and Governmental Conduct Code (the "Conduct Code") Section 3.700 *et. seq.*, and San Francisco Ethics Commission Regulations 3.710(a)-1 – 3.730-1, prohibit the public officials who approved this contract from receiving: (1) gifts, honoraria, emoluments or pecuniary benefits of a value in excess of \$50; (2) any employment for compensation; or (3) any campaign contributions for any elective office for a period of up to six years from individuals and entities who are "public benefit recipients" of the contract. Public benefit recipients of the contract are: (1) the individual, corporation, firm, partnership, association, or other person or entity that is a party to the contract; (2) an individual or entity that has a direct 10% equity, or direct 10% participation, or direct 10% revenue interest in that party at the time the public benefit is awarded; or (3) an individual who is a trustee, director, partner or officer of the contracting party at the time the public benefit is awarded.

Contractor understands that any public official who approved this contract may not accept campaign contributions, gifts, or future employment from Contractor except as provided under the Conduct Code. Contractor agrees to notify any other individuals or entities that may be deemed "public benefit recipients" under the Conduct Code because of this contract. Upon request, Contractor agrees to furnish, before this contract is entered into, such information as any public official approving this contract may require in order to ensure such official's compliance with the Conduct Code. Upon request, the City agrees to provide, before this contract is entered into, Contractor with a list of public officials who, under the Conduct Code, approved this contract. Failure of any public official who approved this contract to abide by the Conduct Code shall not constitute a breach by either the City or Contractor of this contract. Notwithstanding anything to the contrary in this contract, neither party shall have the right to terminate the contract due to any failure by the other party to provide the information described in this paragraph.

#### 49. Prohibiting Use of City Funds for Political Activity

No funds appropriated by the City and County of San Francisco for any contract, grant agreement or loan agreement may be expended for participating in, supporting, or attempting to influence a political campaign for any candidate or measure. Recipients of city funds will cooperate in audits conducted by the Controller to verify that no City funds were used for political purposes.

In accordance with San Francisco Administrative Code Chapter 12.G, Contractor may not participate in, support, or attempt to influence any political campaign for a candidate or for a ballot measure (collectively, "Political Activity") in the performance of the services provided under this Agreement. Contractor agrees to comply with San Francisco Administrative Code Chapter 12.G and any implementing rules and regulations promulgated by the City's Controller. The terms and provisions of Chapter 12.G are incorporated herein by this reference. In the event Contractor violates the provisions of this section, the City may, in addition to any other rights or remedies available hereunder, (i) terminate this Agreement, and (ii) prohibit Contractor from bidding on or receiving any new City contract for a period of two (2) years.

#### 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 acknowledges that, pursuant to the Americans with Disabilities Act (ADA), programs, services and other activities provided by a public entity to the public, whether directly or through a contractor, must be accessible to the disabled public. Contractor shall provide the services specified in this Agreement in a manner that complies with the ADA and any and all other applicable federal, state and local disability rights legislation. Contractor agrees not to discriminate against disabled persons in the provision of services, benefits or activities provided under this Agreement and further agrees that any violation of this prohibition on the part of Contractor, its employees, agents or assigns will constitute a material breach of this Agreement.

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.

#### 56. 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.

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

**CITY**

Approved:

Edward D. Reiskin.  
Director

---

---

Approved as to Form:  
Dennis J. Herrera  
City Attorney

John I. Kennedy  
Deputy City Attorney

**CONTRACTOR**

Name: Schindler Elevator Corporation

Address: 555 McCormick Street

City: San Leandro State: CA Zip: 94577-1107

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.

By:

Name:

Title:

Telephone No.

Federal Employer Number

## 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 Rosa Rankin at (415) 401-3107 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 Rosa Rankin at (415) 401-3107.

#### 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 700 Pennsylvania, Building C, San Francisco, California. To obtain a copy of plans and specifications contact Rosa Rankin at (415) 401-3107.

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 Rosa Rankin at (415) 401-3107.

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 Rosa Rankin at (415) 401-3107 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).