

**AGREEMENT FOR ELEVATOR MAINTENANCE SERVICES FOR CITYWIDE LOCATIONS  
BETWEEN THE CITY OF SAN JOSÉ  
AND  
A LEWIS ENTERPRISES, INC**

This Agreement is entered into as the City's execution date ("Effective Date") between the City of San José, a municipal corporation ("City"), and A Lewis Enterprises, Inc., a California Corporation registered to conduct business in the State of California, (hereinafter "Contractor"). Each of City and Contractor are sometimes hereinafter referred to as a "Party" and collectively as the "Parties.

**RECITALS**

**WHEREAS**, on December 7, 2017, City issued a Request for Proposal ("RFP") for elevator maintenance services; and

**WHEREAS**, Contractor has a good understanding of the City's requirements through the Contractor's examination of the City's existing equipment, correspondence, and the Request for Proposal documents; and

**WHEREAS**, Contractor has the necessary expertise and skill to perform such services and Contractor's proposal can best meet City's needs;

***NOW, THEREFORE, THE PARTIES AGREE AS FOLLOWS:***

**1 AGREEMENT DOCUMENTS**

The documents forming the entire Agreement between City and Contractor shall consist of this Agreement including:

- EXHIBIT A-1 - Scope of Services
- A-2 - Schedule of Performance
- A-3 - Elevator Maintenance Repair Log
- A-4 - Elevator Fire Recall Test Log
- A-5 - Supplemental Services Work Order Form
- EXHIBIT B - Compensation
- EXHIBIT C - Insurance Requirements
- EXHIBIT D-1 - Wage Requirements and Information  
Attachment 1: City of San José Classification Determination
- EXHIBIT D-2 - Labor Compliance Workforce Statement
- EXHIBIT D-3 - Labor Compliance Fringe Benefit Statement
- EXHIBIT D-4 - Labor Compliance Addendum
- EXHIBIT E - Change Order Form
- EXHIBIT F - Notice of Option to Extend Agreement

In the event any discrepancies or inconsistencies between the provisions of this Agreement and

any of the above-referenced documents arise, the provisions of this Agreement will prevail. The provisions in the Exhibits shall prevail over conflicting terms in any Attachments to the Exhibits. Contractor and City hereby acknowledge that they have drafted and negotiated the Agreement jointly and that the Agreement will be construed neither against nor in favor of either, but rather in accordance with its fair meaning

This Agreement and the Exhibits set forth above, contain all of the agreements, representations and understandings of the parties hereto, and supersede and replace any previous understandings, commitments, or agreements, whether oral or written. Any other terms or conditions included in any shrink-wrap or boot-screen license agreements, quotes, invoices, acknowledgments, bills of lading, or other forms utilized or exchanged by the Parties shall not be incorporated in this Agreement or be binding upon the Parties unless the Parties expressly agree in writing or unless otherwise provided for in this Agreement.

## **2 SCOPE OF SERVICES**

### ***2.1 Scope of Work***

Contractor shall perform those services set forth in the Scope of Services which are attached as Exhibits A-1 through A-5 hereto and incorporated as through fully set forth herein (the "Scope of Services").

### ***2.2 Equipment***

Any additional equipment, parts, or services required for final acceptance as detailed in Scope of Services but not reflected in the Contractor's proposal such pricing shall be the sole responsibility of the Contractor and at no cost to the City.

### ***2.3 Notification***

Contractor agrees to notify City promptly of any factor, occurrence, or event coming to its attention that may affect Contractor's ability to meet the requirements of the Agreement, or that is likely to occasion any material delay in completion of the projects contemplated by this Agreement. Such notice shall be given in the event of any loss or reassignment of key employees, threat of strike, or major equipment failure.

## **3 TERM OF AGREEMENT**

### ***3.1 Term***

The term of this Agreement is from *July 1, 2018* to *June 30, 2019* ("Initial Term"), inclusive, subject to the provisions of Section 11 and subsection 3.2.

### ***3.2 Options to Extend***

City has the right to extend the term of this Agreement for nine (9) additional one-year periods ("Option Periods"), through June 30, 2028, based upon the same conditions of the Initial Term, as set forth in Exhibit B. City shall provide Contractor prior written notice in

the form of Exhibit F of its intention to exercise its option prior to the end of the then current term.

### **3.3 No Waiver.**

City's agreement to extend the term of this Agreement is not a waiver of the "time is of the essence" provision in Section 4.

### **3.4 Annual Appropriations of Funds**

City's funding of this Agreement shall be on a fiscal year basis (July 1 to June 30) and is subject to annual appropriations. Contractor acknowledges that City, a municipal corporation, is precluded by the California State Constitution and other laws from entering into obligations that financially bind future governing bodies, and that, therefore, nothing in this Agreement shall constitute an obligation of future legislative bodies of the City to appropriate funds for purposes of this Agreement. Accordingly, the Parties agree that the Initial Term and any Option Periods are contingent upon the appropriation of funds by the City. This Agreement will terminate immediately if funds necessary to continue the Agreement are not appropriated. Despite the foregoing, the City shall pay Contractor for any Services performed in accordance with this Agreement up to the date of termination.

## **4 SCHEDULE OF PERFORMANCE**

Contractor's services must be completed according to the schedule set out in the attached Exhibit A-2, entitled "Schedule of Performance." Time is of the essence in this Agreement.

## **5 COMPENSATION**

### **5.1 Contract Price**

The maximum amount of compensation to be paid to Contractor, including both payment for labor and additional cost, for scheduled base services shall not exceed One Hundred Twenty-Eight Thousand and Four Hundred Dollars (\$128,400.00), and the maximum amount of compensation to be paid to the Contractor for unscheduled supplemental services shall not exceed Fifty-Thousand Dollars (\$50,000.00), for a total not-to-exceed maximum compensation of **One Hundred Seventy-Eight Thousand and Four Hundred Dollars (\$178,400.00)** during the Initial Term ("Maximum Compensation").

The terms, rate and schedule of payment are set forth in the attached Exhibit B, entitled "Compensation." City will make payments to Contractor within thirty (30) days after the date of approval of each invoice. City will make payments when due in the form of a check, cashier's check, or wire transfer drawn on a U.S. financial institution.

### **5.2 Freight, Title and Risk of Loss**

All freight charges will be pre-paid by Contractor and added to the invoices. Title in the Equipment shall remain with the Contractor until such goods have been paid in full. However, such goods shall be entirely at Contractor's risk from the time they are placed in the possession of the carrier for shipment to City and received by the City. Contractor shall ensure that the

goods are insured against “all risks” from the time the goods are placed in the possession of the carrier for shipment to City. Contractor will pack and ship all Equipment in accordance with good commercial practices.

### **5.3 Non-Funding**

Each payment obligation of City is conditioned upon the availability of state or local government funds which are apportioned or allocated for the payment of such an obligation. If the funds are not allocated and available for the continuance of the function performed by Contractor, the product or service directly or indirectly involved in the performance of that function may be terminated by City at the end of the period for which funds are available. City shall notify Contractor at the earliest possible time of any products or services which will or may be affected by a shortage of funds. If the shortage of funds relates to ongoing payments such as subscription services or support, Contractor reserves the right to terminate the Agreement with 30 days’ notice as payment of subscription services and support is a requirement of being able to use the system.

No penalty shall accrue for City in the event this provision is exercised, and City shall not be liable for any future payments due or for any damages as a result of termination under this Section. This provision shall not be construed so as to permit City to terminate this Agreement or any products or services in order to acquire similar equipment or service from another party. Contractor agrees to render any assistance which City may seek in affecting a transfer of any right of City in this Agreement, or any part hereof, that is required of City pursuant to the securing of financing hereunder. Despite the foregoing, the City shall pay Contractor for any Services performed in accordance with this Agreement up to the date of termination.

## **6 STANDARDS OF SERVICE**

In connection with the performance of any Services pursuant to this Agreement:

### **6.1 Number of Employees**

Contractor warrants it will provide sufficient employees to complete the Services ordered within the applicable time frames established pursuant to this Agreement. Furthermore, Contractor shall, at its expense, supply all tools, equipment and other materials necessary to perform the Services contemplated in this Agreement.

### **6.2 Skill of Employees**

Contractor warrants that employees shall have sufficient skill, knowledge, and training to perform Services and that the Services shall be performed in a professional and workmanlike manner.

### **6.3 Duty of Confidentiality**

All data, documents, discussions or other information developed or received by or for one Party in performance of this Agreement are confidential and must not be disclosed to any person except as authorized by the other Party, or as required by law. The receiving Party warrants that all employees utilized by it in performing Services are under a written obligation to the receiving Party requiring the employee to maintain the confidentiality of information of the other Party to the extent permitted by law.

### **6.4 Security and Safety**

Contractor shall require employees providing Services at a City location to comply with applicable City security and safety regulations and policies. City may require each employee providing Services to undergo a background investigation, including, but not limited to a criminal records and fingerprint check. Contractor shall promptly replace any employee found to be unacceptable to City, in its sole discretion, on the basis of a significant infraction found in the background investigation.

### **6.5 Contractor's obligations to employees**

Contractor shall provide for and pay the compensation of its employees and shall pay all taxes, contributions, and benefits (such as, but not limited to, workers' compensation benefits) which an employer is required to pay relating to the employment of employees. City shall not be liable to Contractor or to any employee for Contractor's failure to perform its compensation, benefit, or tax obligations. Contractor shall indemnify, defend and hold City harmless from and against all such taxes, contributions and benefits and will comply with all associated governmental regulations, including the filing of all necessary reports and returns.

### **6.6 Replacement of Employees**

During the course of performance of Services, City may request replacement of an employee or a proposed employee, provided that there is reasonable cause. In such event, Contractor shall, within five (5) working days of receipt of such request from City, provide a substitute employee of sufficient skill, knowledge, and training to perform the applicable Services. If, within the first thirty (30) days after an employee's commencement of Services, City notifies Contractor (1) such employee's level of performance is unacceptable, (2) such employee has failed to perform as required, or (3) such employee, in City's sole opinion, lacks the skill, knowledge or training to perform at the required level, then Contractor will be required to review the work performed by said employee, confirm the quality of work, and correct any items the Contractor deems incorrect. If City requests replacement of an employee for the above-referenced reasons after such thirty (30) day time period, or at any time for a reason other than the reasons indicated above. City shall not be required to pay for, and shall be entitled to a refund of, any sums paid to Contractor for such employee's Services after the date of City's requested replacement of such employee.

## **7 CHANGE ORDER PROCEDURE AND AUTHORIZATION**

### **7.1 Changes**

Any changes to this Agreement that relate to (i) the deletion of Products or Services, (ii) adding additional Products or Services, (iii) changing or modifying Products or Services, or (iv) making other changes that materially alter the scope of this Agreement or the Deliverables required under this Agreement, including approval of all performance and/or payment schedules shall be made by the Director of Finance in accordance with the procedures set forth below.

### **7.2 Contract Change Requests**

Either Party hereto may, from time to time, and at any time during the term hereof request a change, as defined in the above section. The Party requesting the change is hereinafter referred to as the "Requesting Party." Requests for changes shall be in writing and shall be addressed and delivered to the other Party as provided herein. Such writing shall be identified as a "Contract Change Request," shall carry a sequential number for ease of tracking, shall set forth in detail the nature of the change requested and the costs associated therewith, and shall identify the Products, Services, Deliverables or Schedules to be changed.

### **7.3 Procedures**

As soon as practical after receipt by the notified Party of copies of the Request, the Parties shall as necessary meet to discuss the change and to ascertain its cost and schedule impacts, if any.

### **7.4 Change Orders**

If the Parties decide to implement a change request, a standard form Change Order ("CO") shall be prepared in a form substantially similar to the form attached hereto as Exhibit E, which CO shall describe the change, delineate the cost, schedule, and other impacts of the change and the payment terms for any price increase. Only City's Director of Finance and Contractor's Authorized Representative shall have authority to execute CO's to this Agreement. Execution of a CO by City's Director of Finance and Contractor's Authorized Representative shall constitute a modification hereof and shall be binding on both Parties hereto.

## **8 TAXES AND CHARGES**

Contractor shall be responsible for payment of all taxes, fees contributions or charges applicable to the conduct of Contractor's business.

## **9 LABOR COMPLIANCE**

This Agreement is subject to City's Prevailing/Living Wage Policy and the applicable implementing regulations (collectively, the "Policy"). Contractor shall comply with the provisions of the attached Labor Compliance Addendum (Exhibit D-1 through Exhibit D-4), which sets forth Contractor's obligations under the Policy.

## **10 REPRESENTATION AND WARRANTIES**

### ***10.1 Equipment Warranty***

Contractor warrants that equipment under normal use and service will be free from defects in material and workmanship for the applicable warranty period. The warranty period shall be one year from the date of acceptance of work by City. If City claims that equipment is nonconforming, City shall (1) promptly notify Contractor in writing of the basis of such nonconformity; (2) follow Contractor's instructions for return of the equipment; and (3) return the equipment freight prepaid to Contractor's designated location. Contractor shall at its own expense, repair or replace all defective the equipment

In the event that the Contractor shall fail to comply with the conditions of the foregoing guarantee within ten (10) working days after being notified of the defect in writing, City shall have the right, but shall not be obligated to repair, or obtain the repair of, the defect and Contractor shall pay to City on demand all costs and expense of such repair.

Notwithstanding anything herein to the contrary, in the event that any defect in workmanship or material covered by the foregoing guarantee results in a condition which constitutes an immediate hazard to the health or safety, or any property interest, or any person, City shall have the right to immediately repair, or cause to be repaired, such defect, and Contractor shall pay to City on demand all costs and expense of such repair. The foregoing statement relating to hazards to health, safety or property shall be deemed to include either temporary or permanent repairs, which may be required as determined in the sole discretion and judgment of City.

### ***10.2 Contractor Responsibility***

Contractor understands and accepts full responsibility for all requirements and deliverables defined in this Agreement. Contractor warrants it:

- 10.2.1 Has read and agrees with the specifications contained in the Scope of Services (Exhibits A-1 through A-5);
- 10.2.2 Fully understands the facilities, difficulties, and restrictions attending performance of the services; and
- 10.2.3 Contractor agrees to inform City of any unforeseen conditions which will materially affect performance of the work within 45 days of the execution of this Agreement and shall not proceed until written instructions are received from City.

### ***10.3 Authority to Make Agreement***

Contractor represents and warrants that Contractor has full right and authority to perform its obligations under this Agreement. City shall be entitled to use the System without disturbance.

#### **10.4 Contractor Agreements with City Employees**

Contractor agrees to not enter into a relationship that may result in a financial conflict of interest with any employee or agent of the City who participated in the making of governmental decisions related to this Agreement.

### **11 TERMINATION**

#### **11.1 Termination for Convenience**

City shall have the right to terminate this Agreement, without cause, by giving not less than thirty (30) days' written notice of termination.

#### **11.2 Termination for Default**

If Contractor fails to perform any of its material obligations under this Agreement, in addition to all other remedies provided by law, City may terminate this Agreement immediately upon written notice.

#### **11.3 Termination Authority**

The Director of Finance ("Director") is empowered to terminate this Agreement on behalf of City.

#### **11.4 Consequences of Termination**

In the event of termination, Contractor shall deliver to City copies of all reports, documents, and other work performed by Contractor under this Agreement, and upon receipt thereof, City shall pay Contractor for services performed and reimbursable expenses incurred to the date of termination.

### **12 INDEMNIFICATION**

Contractor shall defend, indemnify and hold harmless City, its officers, employees and agents against any claim, loss or liability arising out of or resulting in any way from work performed under this Agreement due to the willful or negligent acts (active or passive) or omissions by Contractor's officers, employees or agents. The acceptance of said services and duties by City shall not operate as a waiver of such right of indemnification.

### **13 INSURANCE REQUIREMENTS**

Contractor agrees to have and maintain the policies set forth in Exhibit C, entitled "Insurance Requirements," which is attached hereto and incorporated herein. All policies, endorsements, certificates and/or binders shall be subject to approval by the Risk Manager of the City of San Jose as to form and content. These requirements are subject to amendment or waiver if so approved in writing by the Risk Manager. Contractor agrees to provide City with a copy of said policies, certificates and/or endorsements before work commences under this Agreement.



## **14 WAIVER**

Contractor agrees that City's waiver of any breach or violation of any provision of this Agreement shall not be deemed to be a waiver of any other provision or a waiver of any subsequent breach or violation of the same or any other provision. City's acceptance of the performance of any of Contractor's services will not be a waiver of any provision of this Agreement.

## **15 INDEPENDENT CONTRACTOR**

Contractor, in the performance of this Agreement, is an independent contractor. Contractor shall maintain complete control over all of Contractor's employees, any subcontracting subcontractors, and Contractor's operations. Neither Contractor nor any person retained by Contractor may represent, act, or purport to act as the agent, representative or employee of City. Neither Contractor nor City is granted any right or authority to assume or create any obligation on behalf of the other.

## **16 COMPLIANCE WITH LAWS**

Contractor shall comply with all applicable laws, ordinances, codes and regulations (collectively, "laws") of the federal, state and local governments, including without limitation, any and all laws specified elsewhere in this Agreement.

## **17 CONFLICT OF INTEREST**

Contractor shall avoid all conflict of interest or the appearance of conflict of interest in performance of this Agreement.

## **18 NONDISCRIMINATION**

Contractor agrees that there shall be no discrimination against, or segregation of, any person, on account of race, sex, color, age, religion, sexual orientation, actual or perceived gender identity, disability, ethnicity, national origin, marital status, or family status, in connection with or related to the performance of this Agreement.

## **19 GIFTS**

### ***19.1 Prohibition on Gifts***

Contractor acknowledges that Chapter 12.08 of the San Jose Municipal Code prohibits City's officers and designated employees from accepting gifts as defined in Chapter 12.08.

### **19.2 No Offer**

Contractor agrees not to offer any City officer or designated employee any gift prohibited by Chapter 12.08.

### **19.3 Breach of Agreement**

Contractor's offer or giving of any gift prohibited by Chapter 12.08 will constitute a material breach of this Agreement. In addition to any other remedies City may have in law or equity, City may terminate this Agreement for such breach as provided in Section 11 of this Agreement.

## **20 DISQUALIFICATION OF FORMER EMPLOYEES**

Contractor is familiar with Chapter 12.10 of the San Jose Municipal Code ("Revolving Door Ordinance") relating to the disqualification of City's former officers and employees in matters which are connected with their former duties or official responsibilities. Contractor shall not utilize either directly or indirectly any officer, employee, or agent of Contractor to perform services under this Agreement, if in the performance of such services, the officer, employee, or agent would be in violation of the Revolving Door Ordinance.

## **21 CONFIDENTIAL INFORMATION**

All data, documents, discussions or other information developed or received by or for Contractor in performance of this Agreement are confidential and must not be disclosed to any person except as authorized by City, or as required by law.

## **22 OWNERSHIP OF MATERIALS**

All reports, documents or other materials developed or discovered by Contractor or any other person engaged directly or indirectly by Contractor to perform Contractor's services are City's property without restriction or limitation upon their use.

## **23 CONTRACTOR'S BOOKS AND RECORDS**

### **23.1 Maintenance during Term**

Contractor shall maintain any and all ledgers, books of account, invoices, vouchers, canceled checks, and other documents evidencing or relating to charges for services, or expenditures and disbursements charged to City for a minimum period of three (3) years, or for any longer period required by law, from the date of final payment to Contractor pursuant to this Agreement.

### **23.2 Maintenance after Term**

Contractor shall maintain all documents which demonstrate performance under this Agreement for a minimum period of three (3) years, or for any longer period required by law, from the date of termination or completion of this Agreement.

### **23.3 Inspection**

Any documents required to be maintained pursuant to this Agreement must be made available for inspection or audit, at any time during regular business hours, upon written request by the City Attorney, City Auditor, City Manager, or a designated representative of any of these officers. Contractor shall provide copies of such documents to City for inspection at City Hall when it is practical to do so. Otherwise, unless an alternative is mutually agreed upon, the records shall be available at Contractor's address indicated for receipt of notices in this Agreement.

### **23.4 Custody of Records**

Where City has reason to believe that any of Contractor's documents relating to this Agreement may be lost or discarded due to dissolution, disbandment or termination of Contractor's business, City may, by written request by any of the above-named officers, require that custody of the Contractor's documents be given to City and that these documents be maintained in City Hall. City agrees to grant access to Contractor's documents to any party authorized by Contractor, Contractor's representatives, or Contractor's successor-in-interest.

## **24 ASSIGNABILITY**

The parties agree that the expertise and experience of Contractor are material considerations for this Agreement. Unless specifically authorized by this Agreement, Contractor may not assign the performance of any obligation or interest under this Agreement without the prior written consent of City. Any attempt by Contractor to assign this Agreement, in violation of this Section, will be voidable at City's sole option.

## **25 SUBCONTRACTORS**

### **25.1 Authorized Subcontractors**

Notwithstanding Section 24 (Assignability) above, Contractor may use designated subcontractors approved in advance by City in performing Contractor's services. Contractor must obtain City's prior written consent in order to change or add subcontractors. Contractor shall be responsible for directing the work of the approved subcontractors and for any compensation due to subcontractors. City assumes no responsibility whatsoever concerning such compensation.

### **25.2 Compliance with Agreement**

Contractor shall ensure that Contractor's subcontractors comply with this Agreement. At City's request, Contractor shall require any or all of Contractor's subcontractors to sign an agreement with Contractor requiring compliance with this Agreement.

## **26 GOVERNING LAW**

This Agreement must be construed -- and its performance enforced--under California law.

## 27 VENUE

In the event that suit is brought by either party to this Agreement, the parties agree that venue must be exclusively vested in the state courts of the County of Santa Clara, or where otherwise appropriate, exclusively in the United States District Court, Northern District of California, San Jose, California.

Contractor further agrees that in the event a lawsuit involving this Agreement is filed by City, Contractor will unconditionally accept the jurisdiction of a federal or state court located in Santa Clara County, California.

## 28 NOTICES

All notices and other communications required or permitted to be given under this Agreement must be in writing and must be personally served, or mailed, postage prepaid via U. S. mail, or sent via courier service, addressed to the respective parties as follows:

To City:                      City of San Jose  
   Attention: Director of Finance  
   City of San Jose  
   200 East Santa Clara St., 13<sup>th</sup> Floor  
   San Jose, CA 95113

To Contractor:            ***A Lewis Enterprises***  
   Attention:Lindsey Lewis  
   1064 Horizon Drive, Suite 5  
   Fairfield, CA 94533

Notice will be effective on the date personally delivered or if sent by courier service, on the date of receipt. If mailed, notice will be effective three (3) days after deposit in the mail.

The parties may change their respective addresses in accordance with the provisions of this Section.

## 29 MISCELLANEOUS

### 29.1 *Survival of Provisions*

If any part of this Agreement is for any reason found to be unenforceable, all other parts nevertheless remain enforceable.

### 29.2 *Assignment*

Subject to the provisions of Section 24 (Assignability), this Agreement binds and inures to the benefit of the parties and their respective successors and assigns.

**29.3 Headings**

The headings of the sections and exhibits of this Agreement are inserted for convenience only. They do not constitute part of this Agreement and are not to be used in its construction.

**29.4 Authority of City Manager**

Where this Agreement requires or permits City to act and no officer of the City is specified, City’s Manager or the designated representative of City’s Manager has the authority to act on City’s behalf.

APPROVED AS TO FORM:

City of San José  
a municipal corporation

\_\_\_\_\_  
Rosa Tsongtaatarii  
Senior Deputy City Attorney  
Date: \_\_\_\_\_

By \_\_\_\_\_  
Jennifer Cheng  
Deputy Director, Finance  
Date: \_\_\_\_\_

A Lewis Enterprises, Inc.  
a California corporation authorized to do  
business in California

By \_\_\_\_\_  
*First Authorized Signature*

Name: Lindsey Lewis  
Title: Chief Financial Officer  
Date: \_\_\_\_\_

By \_\_\_\_\_  
*Second Authorized Signature*

Name: Anthony Lewis II  
Title: Chief Executive Officer  
Date: \_\_\_\_\_

## **EXHIBIT A-1 SCOPE OF SERVICES**

This scope of services defines the principal activities and responsibilities of the Contractor and City for elevator maintenance services for Citywide locations.

### **1. GENERAL INFORMATION**

- 1.1** The Contractor shall provide safe, high quality, reliable, uninterrupted elevator maintenance and repair services at various Citywide locations.
- 1.2** The Contractor shall elevator maintenance and repair services at the various Citywide locations, as detailed in Exhibit A-2 "Schedule of Performance."
- 1.3** The City, at its discretion, reserves the right to add or delete elevators from Exhibit A-2, "Schedule of Performance".

### **2. OVERALL GOAL AND OBJECTIVES:**

The overall goals and objectives of the Contractor are:

- 2.1** To provide on-site elevator maintenance functions for all Citywide locations specified in Exhibit A-2 "Schedule of Performance."
- 2.2** To respond to trouble calls and perform the necessary repair or action effectively, efficiently and in a timely manner.
- 2.3** To know the operational status and functional performance of Citywide elevators at all times.
- 2.4** To provide accurate equipment maintenance and repair activity documentation.

### **3. CONTRACTOR REQUIREMENTS:**

- 3.1** Contractor must possess and maintain a valid C-11 Elevator Contractors license with the State of California.
- 3.2** All work performed on elevators by Contractor must be performed by a Certified Competent Conveyance Mechanic (CCCM) or under the supervision of a CCCM.
- 3.3** The City requires the Contractor to provide sufficient labor, equipment and other resources as required to repair and maintain the systems at all times within the City's requirements as described in Exhibit A-1, "Scope of Services".
- 3.4** Contractor's assigned personnel to the City's Police facilities must be able to meet the security requirements outlined in Section 14.

### **4. BASE SERVICES**

#### **4.1 General Description of Base Services:**

The Contractor shall provide all supervision, labor, materials, tools, parts, supplies, lubricants and equipment necessary to perform all the base services as described below in the elevators listed in Exhibit A-2 "Schedule of Performance." Base Services include but are not limited to:

4.1.1 Full Maintenance Services, which includes preventative maintenance services and corrective repair services.

4.1.2 24-hour callback service 365 days per year.

4.1.3 State elevator tests and inspections.

4.1.4 Documentation of equipment activity and services performed on all Citywide elevators identified herein.

## **4.2 Frequency of Service**

4.2.1 Contractor shall systematically maintain and provide full maintenance services of all elevators listed in Exhibit A-2 in accordance with the minimum designated frequencies.

4.2.1.1 Monthly shall mean once every thirty (30) days.

4.2.2 All work associated with Full Maintenance Services must be performed during scheduled times, not at callback times.

## **4.3 Hours of Service**

4.3.1 The current hours of operations for each location is stipulated in Exhibit A-2.

4.3.2 The City shall not prohibit Contractor from performing work herein during each facility's hours of operations. If Contractor elects to work overtime hours, no additional compensation will be paid by the City.

4.3.3 In the event the Contractor elects to work outside the facility's hours of operations, the Contractor must make arrangements with authorized City contact(s) for building access.

## **4.4 Full Maintenance Services**

### **4.4.1 General Requirements**

4.4.1.1 The Contractor shall be responsible for performing full maintenance services required to maintain all equipment in the condition prescribed by the original equipment manufacturers (OEM) recommended guidelines, including but not limited to all items, finishes, components, systems, subsystems, erected hoist way construction, and machinery enclosures.

4.4.1.2 The Contractor shall maintain all equipment in accordance with latest codes and requirements of the following regulatory agencies, associations and policies:

- ADA: Americans with Disabilities Act
- ASME: American Society of Mechanical Engineers - A17.1; Safety Code for Elevators
- CBC: Title 24; California Building Codes
- CCR: Titles 8; California Code of Regulations
- NEC: National Electric Code. NFPA-72

- IBC: International Building Code
- All applicable and governing codes, ordinances, and laws
- Certificate of Inspection/Permit to Operate issued by the State of California for each covered equipment

4.4.1.3 Contractor shall be responsible for maintaining updated maintenance manuals, maintenance of testing equipment and tools, maintaining wiring diagrams, and cleaning of equipment and its area at no additional charge.

#### **4.4.2 Preventative Maintenance**

4.4.2.1 The Contractor shall perform and maintain a detailed cyclic preventative maintenance program for the elevators specified in Exhibit A-2. Preventative maintenance includes all activities required to keep the units operating at the prescribed levels of safety, efficiency and reliability as defined in the O&M manuals and installation specifications.

4.4.2.2 The preventative maintenance program shall at the minimum include:

- Periodic lubrication of parts and equipment as per OEM's recommendation. Charts are to be provided for each unit indicating when services are provided.
- Annual clean down of the units, drip pans, pits, hoist ways, pallets, hydraulic pumps and components, and all interior parts as required.
- Annual tests and confirmation that the controllers and control systems are functioning properly for each unit.
- Five-year, full load, full speed test of buffers, governors and safeties.
- Five-year pressure test on hydraulic elevators.
- Monthly test of Phase I and Phase II Firefighter's Service and must be recorded in the Log provided in Exhibit A-4 "Elevator Fire Recall Test Log".
- Annual smoke and recall tests.
- Routine inspections and tests to identify any unusual or abnormal equipment conditions.

#### **4.4.3 Corrective Repair Maintenance Services**

4.4.3.1 Contractor shall provide maintenance for any corrective measures or repairs necessitated by an inspection, a failure, or unusual circumstance adversely affecting the normal equipment operation. Corrective maintenance may be required as a result of an unsatisfactory condition discovered during an inspection or call from the City to the Contractor to report any unit that is out of service.

4.4.3.2 When components are worn beyond a safe level of dependable service, Contractor shall repair or replace the defective components listed in Sections 4.4.3.3 and 4.4.3.4.



Upon written notification from the City, the City reserves the right to request and authorize repairs for defective equipment with another vendor. In such cases, Contractor shall not be held responsible for the equipment until repairs have been completed.

#### **4.4.3.3 Electric Elevators (Traction, Drum, Passenger, Service/Freight)**

- 4.4.3.3.1 Machine drive sheaves or drum drives, sheave or drum shaft bearings, brake pulleys, brake coils, brake contacts, linings and component parts, drum buffers, and stop motion switches.
- 4.4.3.3.2 Motors and motor generators, motor windings, rotating elements, commutators, brushes, brush holders, and bearings.
- 4.4.3.3.3 Controllers, selectors, dispatching equipment, all relays, solid state components, resistors, condensers, transformers, contacts, leads dashpots, timing devices, computer devices, steel selector tapes, and mechanical and electrical drive equipment.
- 4.4.3.3.4 Governors, governor sheaves and shaft assembly, bearings, contacts, and governor laws.
- 4.4.3.3.5 Deflectors, car and counterweight sheaves, bearings, car and counterweight buffers, car and counterweight guide rails, top and bottom limit switches, governor tension sheave assembly, compensating sheave assembly, counterweight and counterweight guide shoes, including rollers or gibs and re-babbiting counterweights.
- 4.4.3.3.6 Hoist way door interlocks, hoist way door hangers, bottom door guides and auxiliary door closing devices.
- 4.4.3.3.7 Automatic power-operated door operators, car door hangers, car door contacts, door protective devices, load weighing equipment, car frames, car safety mechanism, platforms, wood platform flooring, elevator cars, elevator car guide shoes, gibs or rollers, signal and operating fixtures, including lights, buzzers and gongs in all signal and operating fixtures.
- 4.4.3.3.8 All wire ropes to equalize the tension on all hoisting ropes.
- 4.4.3.3.9 Conductor cables, hoist way and machine room elevator wiring.
- 4.4.3.3.10 Re-shackle cables, hoist way and machine room elevator wiring.
- 4.4.3.3.11 Shorten re-shackle hoist or compensating cables.
- 4.4.3.3.12 For freight elevators with vertical lifting or collapsible car gates and/or bi-parting, vertical lifting doors or hoist way gates.
- 4.4.3.3.13 Contacts, pulleys, cables and locks.
- 4.4.3.3.14 Interlocks, retiring cams, door astragals and door guides.

#### **4.4.3.4 Hydraulic Elevators**

4.4.3.4.1 Pumping plant, valves, piping, fittings, cylinders, packing, plunger tanks, heaters, mufflers, and remote pipes if exposed.

4.4.3.4.2 Materials covered by Sections 4.4.3.3.1 to 4.4.3.3.4.

#### **4.4.4 Exclusions from Full Maintenance Services**

Full Maintenance Services do not include the maintenance, repair, or replacement of the following:

4.4.4.1 Elevator car enclosures, hoist way enclosures, hoist way door panels, frames and sills, and fluorescent lighting.

4.4.4.2 Hydraulic elevator buried cylinders and piping.

4.4.4.3 Damage caused by Force Majeure or obvious abuse such as "Vandalism".

#### **4.5 State Elevator Tests and Inspections**

4.5.1 Within thirty (30) days intervals, Contractor shall test for the proper operation of all safety features of elevators listed in Exhibit A-2, including Fire Department recall service and other special controls.

4.5.2 Contractor shall perform the following annually:

4.5.2.1 Examine all safety devices and governors.

4.5.2.2 Electrically test the car balance.

4.5.2.3 Test elevator speed.

4.5.3 The Contractor shall provide all tests per industry standards and best practices. The Contractor shall document results of all tests and provide documented results to the City.

4.5.4 The Contractor shall stand all required inspections and tests by governing agencies.

4.5.5 The Contractor shall provide annual State required testing and re-inspections at no additional charge.

4.5.6 State inspection fees shall be paid by the City. Fees for re-inspection due to failure to eliminate deficiencies covered under the maintenance services will be paid by the Contractor.

4.5.7 City reserves the right to make such inspection and tests whenever necessary to assess whether maintenance service requirements are being fulfilled. Deficiencies that were not promptly corrected shall be at the Contractor's expense. In no instance, shall the City be liable for the frequency or sufficiency of such inspections or tests.

## **5. EMERGENCY REPAIRS (INCLUDING ELEVATOR ENTRAPMENTS)**

Contractor shall perform all work required to mitigate unforeseen equipment malfunctions or failures that present an immediate and significant danger to property and/or lives at no additional cost.

**5.1** All emergency calls except entrapment shall have a one and one-half (1.5) hour service response time.

**5.2** The Contractor shall immediately respond to all elevator entrapments within thirty (30) minutes and shall assist in the removal of the persons from the unit.

## **6. REPLACEMENT PARTS**

**6.1** The Contractor shall maintain enough replacement parts to maintain all equipment in a safe and efficient operating condition. All elevator parts shall be available for repairs within 24 hours.

**6.2** The Contractor shall maintain on-site in each City-approved machine room a sufficient quantity of normal maintenance replacement parts required to maintain the equipment. This includes but is not limited to contacts, switch parts, coils, conductors, springs, holders, resistors, relays, lamps, condensers, tubes, transformers, car and hall buttons, fuses, lubricants, and wiping rags.

**6.3** In addition, Contractor shall maintain in an approved City facility or in a Contractor's facility within 100 miles of San Jose the following items:

6.3.1 One (1) set of motor brushes and holders for each type of motor and generator. One (1) door operator motor of each elevator type used.

6.3.2 Hanger sheaves for car and hoist way doors.

6.3.3 Two (2) complete door interlocks.

6.3.4 One (1) set of generator bearings for each type of generator.

6.3.5 One (1) set of brake linings for each type of elevator brake.

6.3.6 Parts for door protective devices.

6.3.7 All other parts as needed to assure prompt replacement in the event of the shutdown of any elevators.

**6.4** The Contractor shall utilize OEM replacement parts and lubricants obtained from and/or recommended by the manufacturer.

**6.5** The Contractor shall cover replacements parts as part of the Base Services, at no additional cost to the City.

**6.6** Contractor is to make every reasonable effort to maintain the existing components. If this is not feasible, the Contractor shall be responsible for covering and finding suitable replacements for obsolete components and parts and/or adapting new components to the existing equipment.

**6.7** City reserves the right to inspect Contractor's inventory if City deems such inspection is necessary.

## **7. 24-HOUR CALLBACK**

- 7.1** Contractor shall provide prompt service in the event of improper functioning of elevators twenty-four (24) hours per day, seven (7) days per week. This service shall be performed at no additional charge to the City.
- 7.2** The Contractor shall provide a 24x7x365 Dispatch Desk with a single point of contact for all 24-hour callback requests for service. A person and not a voicemail shall answer calls placed to the Dispatch Desk. Dispatch Desk personnel shall be responsible to log and forward basic information about calls including party calling, caller's contact information, accurate technical description of the problem or request, extent of the outage if a portion of the system is down, equipment and location involved, and any other relevant technical portions of the activity log entry for the call.
- 7.3** The Contractor shall respond to all requests for service and corrective action 24 hours a day, 365 days of the year. The Contractor shall, at a minimum, initially dispatch one journeyman level mechanic to respond to the call for service. However, if the Contractor determines additional labor or resources is required to complete the required repairs and return a broken unit to service, the Contractor shall provide the additional labor or resources at no additional cost to the City. No repair shall be postponed or any units placed out of service due to lack of labor or resources.
- 7.4** Callbacks for which the elevator is running upon arrival of the Contractor, or for which the Contractor is unable to determine a cause of failure, shall be at no charge to the City.
- 7.5** Contractor response time to 24-hour callback requests is defined in Section 9.3 below.
- 7.6** The Contractor shall maintain the following information and make it available to the City within 24 hours or upon request:
- Date and time of service call.
  - Time of arrival on site.
  - Corrective action taken.
  - Date and time when the unit is returned to service.
  - Any future actions required to ensure continued reliability of the unit.

## **8. EQUIPMENT PERFORMANCE REQUIREMENTS**

### **8.1 Equipment**

- 8.1.1** All equipment shall operate within tolerances as established by the manufacturer or industry standard best practices, whichever is more stringent.
- 8.1.2** Outside of scheduled and unscheduled work, the Contractor will maintain elevators so that in any given month, 98.5% of each elevator equipment is operational at all times. Reports shall be available upon request by City.

In the event the Contractor fails to maintain 98.5% availability for each piece of equipment, the City reserves the right to request and authorize maintenance or repairs services with other vendors. In such cases, the City shall provide prior notification to the

Contractor of its intention and the Contractor shall be held responsible for the cost and reimburse the City.

## **9. SERVICE LEVEL REQUIREMENTS**

### **9.1 Preventative Maintenance**

The Contractor shall be responsible for performing all preventative maintenance (PM) work at the required frequencies for 100% of the equipment listed in this Scope of Services and Exhibit A-2.

In the event the Contractor does not perform the required monthly preventative maintenance to 100% of the elevators, City will deduct from the monthly invoice or portion thereof from the current monthly rate for the missed elevators.

### **9.2 State Re-Inspection**

The Contractor agrees that in the event that its failure to complete repairs prior to State of California inspection results in any charges incurred by the City for preliminary order re-inspections, then the Contractor shall be obligated to pay such charges and the City shall have the right to deduct such charges from amounts otherwise owing to the Contractor.

### **9.3 Callback Service:**

9.3.1 In the event of an emergency call where actual or imminent physical or psychological damage to the user(s) of the elevator (e.g. entrapment), the Contractor shall respond within thirty (30) minutes of placement of the call by the City.

9.3.2 In the event of non-emergency calls, the Contractor shall provide service within one and one-half (1.5) hours of placement of the call by the City. Upon approval by the authorized City staff, additional time may be allowed.

For each service that falls outside the response time that has not been approved by the City, the Contractor shall provide a credit of \$350 per occurrence.

If the Contractor is found unduly responsive to service calls, the City reserves the right to request and authorize repairs for defective equipment with a third-party vendor and the Contractor shall credit the City for the repairs cost from the third-party repairs work. In such cases, the City shall provide prior notification to the Contractor of its intention. The Contractor shall not be held responsible for the equipment until repairs have been completed.

## **10. MAINTENANCE MANAGEMENT SYSTEM DOCUMENTATION AND REPORTING**

### **10.1 Web-based Maintenance Management System**

10.1.1 The Contractor shall provide and utilize a web-based or mobile maintenance management system to schedule and generate work orders for all maintenance and repair activities performed for each piece of equipment covered under this RFP.

10.1.2 The Contractor shall generate work orders for all service calls, service callbacks, entrapments, vandalism/abuse, corrective maintenance repairs and scheduled PMs. Upon completion of work, the Contractor shall be responsible for closing out the work order by inputting all relevant information data in the web-based maintenance management system that relates to the work performed by the Contractor.

This information data shall include, but not be limited to: unit number, name of mechanic(s), date of service, type of service, duration of work performance, response times for callbacks, specific repairs accomplished, part numbers, labor, date completed, equipment availability and any comments necessary to explain corrective action or work performed.

10.1.3 The Contractor shall generate and provide reports of work orders to City as requested.

## **10.2 Equipment History Database**

10.2.1 The Contractor shall maintain an Equipment History Database. The Contractor shall enter in the database all discrepancies noted during the performance of PM service work and inspections and resolutions. The Contractor shall review the Equipment History Database prior to beginning a PM service or inspection to determine if any outstanding deficiencies exist. If recent repairs have been performed and if any unusual outage trends are present, it should then be addressed during the PM.

10.2.2 The Equipment History Database shall be used to document and track all deficiencies identified by the Contractor and shall include all repairs performed by the Contractor in addition to the preventative maintenance service work and inspections.

10.2.3 10.1.3 The Contractor shall generate and provide reports of Equipment History Database to City as requested.

## **10.3 On-site Documentation and Reporting**

10.3.1 The Contractor shall maintain current machine room "log" for all equipment requested in this RFP. The log shall be affixed to the equipment served and shall be displayed in a heavy gauge clear vinyl plastic protective envelope with metal eyelets and snap closures.

10.3.2 The logs shall include emergency callback services describing the nature of all complaints and resolutions (See Exhibit A-3, "Elevator Maintenance/Repair Log") for Log Sheet to be used). For each scheduled or emergency call and for each location designated by the department, the Contractor shall sign-in including date, time-in, time-out, and the ID numbers of the equipment serviced.

## **11. SUPPLEMENTAL SERVICES**

**11.1** The City may request that the Contractor perform supplemental services which are outside the requirements of the Base Services. Supplemental Services may include heavy repair, changes to equipment, rehabilitation refinishing, or repair work to bring equipment up to standards with the provisions of current applicable laws e.g. Americans with Disabilities Act (ADA). The Contractor may be required to alter, improve and/or overhaul equipment, which will modify and/or enhance the aesthetic, operation, performance, reliability, and safety of the units beyond existing levels once completed.

**11.2** The Contractor shall provide all supervision, labor, materials, supplies, chemicals, tools, and equipment necessary to perform requested supplemental services. There shall be no interference with Base Services tasks responsibilities set forth above. The Contractor will advise the City if any of the Contractor's assigned personnel are not available for such work.

**11.3** All supplemental services work shall be requested and approved in advance in writing by the authorized City staff.

11.3.1 The Contractor shall provide a quote upon the City's request. The Contractor's quote will contain a detailed description of the services that are required from the Contractor. The Contractor shall be required to provide to the authorized City staff a detailed cost estimate, including an itemized breakdown for all labor, parts and materials, as well as a schedule with critical milestones for completing the project.

11.3.2 If the City approves the Contractor's quote, the City will issue a completed Supplemental Services Work Order Form (Exhibit A-5) to the Contractor.

11.4 The Contractor shall not proceed with any work described until authorized in advance and in writing by the authorized City staff. The City shall incur no obligation for out of scope work that is not authorized in advance and in writing.

## **12. CONTRACT START UP REQUIREMENTS**

### **12.1 Pre-inspection of Equipment**

12.1.1 Within thirty (30) days from the contract execution, the Contractor shall perform an inspection and assess the condition of all equipment covered under this Scope of Services to establish a condition baseline. The survey shall include observations of deficiencies in equipment condition, operation and/or performance and shall provide a written baseline report of discrepancies and serve as a "starting point" for Contractor to provide ongoing maintenance.

12.1.2 The Condition Survey Report shall identify all deficiencies that the Contractor claims exist, together with a detailed breakdown of the estimated cost to repair each deficiency and to recommend priority to correct each. A draft copy of the Condition Survey Report shall be submitted to the authorized City staff within five (5) business days of the inspection's completion date, and the final report to be submitted to the authorized City staff within five (5) business days from the draft report due date. The City will determine how and when each item will be addressed. Correction of these deficiencies will be accomplished by either Supplemental Services under this Scope of Services or by competitive bid procurement as determined by the City. Any deficiencies found after the Condition Survey Report has been submitted will be considered the Contractor's responsibility and will be covered under Base Services or Supplemental Services, depending on the circumstances.

## **13. KEY CONTRACTOR PERSONNEL**

The Contractor shall identify and provide to the authorized City staff with a list of names, email addresses, and telephone numbers of its key personnel who shall be responsible for fulfilling all the requirements of this Scope of Services including responding to emergency callbacks. The Contractor's Key Personnel List shall be provided to the City and shall be updated when City-approved changes are made.

### **13.1 Contract Manager**

13.1.1 The Contractor shall provide a main point of contact for the authorized City staff and shall carry out all the provisions of the Contract ("Contract Manager").

13.1.2 The Contract Manager shall be available and meet as promptly as possible with the authorized City staff upon City' request to discuss the performance of the work or other provisions of the Contract.

13.1.3 The name of the Contract Manager and an alternate who shall assume the Contract Manager's duties when the primary Contract Manager is absent shall be designated in writing to the authorized City Staff.

### **13.2 Attire**

13.2.1 All employees, including supervisors and sub-contractors of the Contractor shall always, while on the job site to fulfill the requirements of this Scope of Services be attired in a distinctive uniform.

13.2.2 These uniforms must be supplied and maintained by the Contractor at no cost to the City. As part of their uniforms, the Contractor's employees shall conspicuously display the following identification:

- Photo Identification Badge issued by the Contractor.

### **13.3 Conduct**

13.3.1 The Contractor's employees shall at all times while on the job site, whether on or off duty, shall conduct themselves in a professional, orderly and safe manner. Rudeness, fighting, being under the influence of alcohol and/or drugs or bringing and/or consuming alcohol and/or drugs, gambling, soliciting, stealing, and or otherwise undesirable conduct shall not be permitted on the job site and shall result in immediate and permanent removal.

13.3.2 The City reserves the right to remove any of the Contractor personnel from the job site for failing to conduct themselves in a professional, orderly and safe manner.

## **14. POLICE DEPARTMENT SECURITY**

**14.1** All Contractor employees who may have access to the San Jose Police Department buildings are required to submit to a San Jose Police Department- Class F Background Check prior to being allowed on site.

**14.2** It is the Contractor's responsibility to have sufficient badged employees to perform the work required.

**14.3** All employees shall wear approved badges provided by San Jose Police at all times while performing work at Police campuses.

**14.4** Contractor must return all badges issued by the San José Police Department to the Contractor's individual employees back to the San Jose Police Department upon termination of the employee and this Agreement.

**14.5** The Contractor should be prepared to allot at least 1 full day for each employee who will work on Police facilities to complete the security process.

## **15. CONTRACTOR FURNISHED RESOURCES**

### **15.1 Meetings**

The Contractor's representative(s), including the contract manager shall attend all meetings as required by the authorized City staff to perform inspections, discuss, coordinate and evaluate the status and performance of services under Exhibit A-1, "Scope of Services". These meetings are tentatively scheduled to occur once a year or as deemed necessary by the authorized City staff.



## **15.2 Safety**

- 15.2.1 The Contractor and each of his employees shall comply with all applicable OSHA rules and practices, including directives issued by the Police and Fire Departments, while on the job site.
- 15.2.2 The Contractor shall provide and ensure that all personnel at the work site wear the safety devices/apparel.
- 15.2.3 The operation of the Contractor's vehicles or private vehicles by the Contractor's employees on or about the City's properties shall conform to posted regulations and safe driving practices.
- 15.2.4 The Contractor shall be responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the performance of Exhibit A-1, "Scope of Services". The Contractor shall take all necessary precautions for safety of, and shall provide reasonable protection to prevent damage, injury or loss to persons, properties, equipment and vehicles.

## **16. GENERAL REQUIREMENTS**

### **16.1 Quality Control Program**

- 16.1.1 The Contractor shall implement an effective quality control program. This program shall ensure the Contractor fulfills all the requirements of Exhibit A-1, "Scope of Services". A quality control program includes but is not limited to assessing and implementing improvements in the following areas: service maintenance approach, testing approach, response plan for service interruptions and equipment performance maximization.
- 16.1.2 At various times, either scheduled or unscheduled, the authorized City staff may accompany the Contractor while an inspection is performed.

### **16.2 City's Quality Assurance Program**

- 16.2.1 The Contractor is responsible for the day-to-day inspection and monitoring of all Contractor's work performed to ensure compliance with the Exhibit A-1, "Scope of Services" requirements.
- 16.2.2 Maintenance service tasks subject to City's inspections, both during and after completion of work. The City's quality assurance (inspections/evaluations etc.) is NOT a substitute for adequate and consistent quality control (labor supervision/control/resource management etc.) by the Contractor.
- 16.2.3 The City has the right to inspect maintenance services performed, Contractor's workmanship, and materials furnished/utilized in the performance of such services to a practicable extent. The City shall perform inspections as it deems necessary; inspections and/or walk-throughs shall be conducted in a manner that will not unduly interrupt/delay the Contractor's work.
- 16.2.4 If any of the services do not conform to the City's requirements, the City may require the Contractor to perform the services again in conformity with the Contract requirements, at no increase in compensation.

## **17. CONTRACT PHASE OUT**

### **17.1 Maintenance Inspection**

- 17.1.1 Beginning on or about thirty (30) business days prior to end of the term for this Agreement or earlier termination,, the City and/or their technical representative(s) will thoroughly inspect the operating condition of all equipment covered by the Contract to audit the level of maintenance, service and warranty work performed.
- 17.1.2 The Contractor shall provide all necessary labor, equipment, materials and technical expertise required to assist the City to inspect each system, including activities such as removing/replacing panels, covers, steps, pallets, and disassembly of equipment to allow unrestricted access of concealed conditions. The Contractor shall thoroughly exercise all systems and demonstrate each feature and function.
- 17.1.3 Upon end of the term for this Agreement or earlier termination or discontinuance of employment of any of the Contractor personnel working in the City's facilities, all City's keys, security badging and all other City identification shall be surrendered to the authorized City staff.

**EXHIBIT A-2  
SCHEDULE OF PERFORMANCE**

City ID	BUILDING	Address	Days & Hours in Use	Equipment Use	Equipment Type	Make	Elevator No.	Frequency of Routine	Floors Serviced	Mo L. C
8	Police Administration	201 W. Mission St	Mon-Fri 8:00am - 5:00pm	Passenger-Electric	Overhead Traction	Haughton	49271	Monthly	3	\$3
9	Police Administration	201 W. Mission St	Mon-Fri 8:00am - 5:00pm	Passenger-Electric	Overhead Traction	Haughton	49272	Monthly	3	\$3
13	Off-Street Parking Garage	45 N. Market	Mon-Fri 6:30am - 9:30pm	Passenger-Electric	Traction-1st Floor	Otis	42805	Monthly	5	\$3
14	Off-Street Parking Garage	45 N. Market	Mon-Fri 6:30am - 9:30pm	Passenger-Electric	Traction-1st Floor	Otis	42806	Monthly	5	\$3
20	Third & St. John Garage	95 N. 3rd St	24 Hours/7 Days Wk	Passenger-Electric	Overhead Traction	Otis	55742	Monthly	5	\$3
21	Third & St. John Garage	95 N. 3rd St	24 Hours/7 Days Wk	Passenger-Electric	Overhead Traction	Otis	55743	Monthly	5	\$3
22	Third & St. John Garage	95 N. 3rd St	24 Hours/7 Days Wk	Passenger-Electric	Overhead Traction	Otis	55744	Monthly	5	\$3
25	Museum of Art	110 S. Market St.	Tues-Sun 11:00AM-5:00PM	Passenger-Hydro	Electric Plunger	Atlas	61607	Monthly	3	\$1
33	Police Administration	201 W. Mission St.	Mon-Fri 8:00am - 5:00pm	Passenger-Hydro	Electric Plunger	U.S. Elevator		Monthly	4	\$1
35	Block 6 Garage	280 S. Second St	24 Hours/7 Days Wk.	Passenger-Hydro	Electric Plunger	Home	71929	Monthly	5	\$1
37	Mabury Service Yard	1404 Mabury Rd.	Mon-Fri 8:00am - 5:00pm	Passenger-Hydro	Electric Plunger	Cal Western	74458	Monthly	2	\$1
50	PD Communications Bldg	855 N. San Pedro St.	24 Hours/7 Days Wk.	Passenger-Electric	Overhead Traction	Dover	86428	Monthly	4	\$3
51	PD Communications Bldg	855 N. San Pedro St.	24 Hours/7 Days Wk.	Passenger-Electric	Overhead Traction	Dover	86429	Monthly	4	\$3
52	PD Communications Bldg	855 N. San Pedro St.	24 Hours/7 Days Wk.	Passenger-Electric	Overhead Traction	Dover	86426	Monthly	5	\$3

Cit y ID	BUILDING	Address	Days & Hours in Use	Equipment Use	Equipment Type	Make	Elevator No.	Frequenc y of Routine	Floors Serviced	Mo L C
53	PD Communications Bldg	855 N. San Pedro St.	24 Hours/7 Days Wk.	Passenger-Electric	Overhead Traction	Dover	97150	Monthly	5	\$3
67	Museum of Art	110 S. Market Street	Tues-Sat: 10:00AM- 4:30PM; Sunday 12:00PM – 4:00 p.m.	Passenger-Hydro	Electric Plunger	Dover	97151	Monthly	3	\$1
68	Museum of Art	110 S. Market Street	Tues-Sat: 10:00AM- 4:30PM; Sunday 12:00PM – 4:00 p.m.	Passenger-Hydro	Electric Plunger	Dover	97151	Monthly	3	\$1
69	Almaden Winery	5730 Chambertin Dr.	Mon-Fri 8:000am - 5:00pm	Passenger-Hydro	Electric Plunger	Otis	65694	Monthly	2	\$1
70	Central Service Yard	1661 Senter Rd.	24 Hours/7 Days Wk.	Electric-Overhead	Traction	Esco	25319	Monthly	3	\$3
71	Rose Garden Library	1580 Naglee Ave.	M: 1:00pm-7:00pm; Tu-Th: 10:00am-7:00pm, F: 12:00pm-6:00pm, Sat: 10:00am-6:00pm	Passenger-Freight	Hydro-Electric	Schindler	138043	Monthly	2	\$1
72	Almaden Community Center	6445 Camden Ave	Mon-Fri 8:00am - 5:00pm	Passenger	Hydro-Electric	Motion Control	138219	Monthly	2	\$1
73	Cambrian Library	1780 Hillsdale Ave.	M: 1:00pm-7:00pm; Tu-Th: 10:00am-7:00pm, F: 12:00pm-6:00pm, Sat: 10:00am-6:00pm	Passenger	Hydro-Electric	ThyssenKrupp	138219	Monthly	2	\$1
74	West San José Community Center	3707 Williams Rd, San José	Mon/Tues/Thurs-9:00am – 5:00pm, Wed 9:00am-7:00pm, Fri 9:00am-8:30pm	Passenger	Hydro-Electric	Otis	138270	Monthly	2	\$1
78	WPCP	700 Los Esteros Rd	Mon-Fri 8:000am - 5:00pm	Freight	Hydro-Electric	Montgomery	64947	Monthly	2	\$1

Cit y ID	BUILDING	Address	Days & Hours in Use	Equipment Use	Equipment Type	Make	Elevator No.	Frequenc y of Routine	Floors Serv iced	Mo L C
79	WPCP	700 Los Esteros Rd	Mon-Fri 8:00am - 5:00pm	Passenger	Hydro-Electric	Montgomery	64948	Monthly	3	\$1
80	WPCP	700 Los Esteros Rd	Mon-Fri 8:00am - 5:00pm	Passenger	Hydro-Electric	US Elevator	108558	Monthly	2	\$1
81	Roosevelt Community Center	901 E Santa Clara St,	Mon/Tues/Thurs-7:00am – 6:00pm, Wed 9:00am-1:00pm	Passenger	Hydro-Electric	Schindler	151607	Monthly	2	\$1
82	Seven Trees Community Center	3590 Cas Drive	M-Thur: 8:00am-9:00pm; F: 8:00pm-7:00pm, Sat: 9:00am-6:00pm	Passenger	Hydro-Electric	Elevator Control	159091	Monthly	2	\$1
83	Seven Trees Community Center	3590 Cas Drive	M-Thur: 8:00am-9:00pm; F: 8:00pm-7:00pm, Sat: 9:00am-6:00pm	Passenger	Hydro-Electric	Elevator Control	159092	Monthly	2	\$1
84	Police Substation	6087 Great Oaks Pkwy	Mon-Fri 8:00am - 5:00pm	Passenger Hydraulic	Hydro-Electric	Motion Control	159206	Monthly	4	\$1
85	Police Substation	6087 Great Oaks Pkwy	Mon-Fri 8:00am - 5:00pm	Passenger Hydraulic	Hydro-Electric	Motion Control	159207	Monthly	4	\$1
86	Bascom Community Center	1000 S Bascom Ave	M-Thur: 8:00am-9:00pm; Fri: 9:00am-6:00pm; Sat: 9:00am-1:00pm	Passenger Hydraulic	Hydro-Electric	Thyssen Tac 20	159208	Monthly	2	\$1
87	Children's Discovery Museum	180 Woz Way	7 days a week: 9AM-5PM	Freight Hydraulic	Hydro-Electric	Dover	92350	Monthly	3	\$1
88	Children's Discovery Museum	180 Woz Way	7 days a week: 9AM-5PM	Passenger Hydraulic	Hydro-Electric	Dover	92351	Monthly	3	\$1
90	Fire Station 21	2100 S. White Rd, San Jose, 95148	Mon-Fri 8:00am - 5:00pm	Passenger Traction	Traction machine roomless	Kone	169740	Monthly	2	\$3

City ID	BUILDING	Address	Days & Hours in Use	Equipment Use	Equipment Type	Make	Elevator No.	Frequency of Routine	Floors Serviced	Mo L C
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<b>Monthly</b>
<b>Year1 M</b>

**EXHIBIT A-3**

**ELEVATOR MAINTENANCE REPAIR LOG**

**Building Address:**

**Elevator Company Name:**

<b>Elevator No.</b>	<b>Date</b>	<b>Time-In</b>	<b>Time-Out</b>	<b>Callback Problem</b>	<b>Maintenance/Repair Service Performed</b>	<b>Cal</b>

**THIS LOG SHALL BE AFFIXED TO THE EQUIPMENT SERVED AND SHALL BE DISPLAYED IN A HEAVY DUTY PLASTIC PROTECTIVE ENVELOPE WITH METAL EYELET AND SNAP CLOSURE.**

**EXHIBIT A-4**

**ELEVATOR FIRE RECALL TEST LOG**

**ANSI/ASME A17.1 Rule 1206.7**

**Building Name:**

**Building Address:**

<b>Elevator No.</b>	<b>Date Test Completed</b>	<b>Phase I</b>	<b>Phase II</b>	<b>Inspector Name/Title (Test Performed By)</b>	<b>Com</b>



**EXHIBIT A-5  
SUPPLEMENTAL SERVICES WORK ORDER FORM**

Date: \_\_\_\_\_

Date	Time: From/To	Hours	Hourly Pay Rate	Amount	Description of Work
<b>Total Amount Due</b>				\$	

<p>_____ PROJECT MANAGER SIGNATURE (CONTRACTOR) NAME: _____ DATE: _____</p>	<p>APPROVAL TO START WORK: _____ PROJECT MANAGER SIGNATURE (CITY) NAME: _____ DATE: _____</p>
---	---

ACCEPTANCE OF WORK:	_____	DATE: _____
CITY PROJECT MANAGER SIGNATURE		

## EXHIBIT B COMPENSATION

### 1. Compensation

- 1.1. All Payments are based upon City's acceptance of Contractor's performance of the Exhibit A-1, "Scope of Services". City shall have no obligation to pay unless Contractor has successfully completed the work for which payment is due.
- 1.2. The maximum amount of compensation to be paid to Contractor, including both payment for labor and additional cost, for the initial year of scheduled Base Services shall not exceed One Hundred Twenty-Eight Thousand and Four Hundred Dollars (\$128,400.00), plus an additional amount of Fifty-Thousand Dollars (\$50,000.00) available for unscheduled Supplemental Services, for a total not-to-exceed maximum compensation of One Hundred Seventy-Eight Thousand and Four Hundred Dollars (\$178,400.00). Any hours worked for which payment would result in a total exceeding the maximum amount of compensation set forth herein shall be at no cost to City.
  - 1.2.1. The City reserves the right to add or deleted equipment for scheduled Based Services from Exhibit A-2, "Schedule of Performance" at the current rate set forth for each equipment type and adjust the maximum compensation accordingly by a written executed amendment.

### 2. Supplemental Services

- 2.1. In the event the City requires unscheduled Supplemental Services as set forth in Section 11, "Supplemental Services" of Exhibit A-1, "Scope of Services," Contractor shall provide a written quotation, at no cost to the City, the type of Supplemental Service requested and the time required to complete requested work.
- 2.2. The labor rates, material and equipment markup rates for Supplemental Services is set forth as follows:

<b>Labor Category</b>	<b>Hourly Rate</b>	<b>Overtime/Holiday Rate</b>
Engineer	\$275.00	\$550.00
Elevator Repair Person	\$275.00	\$550.00

  

<b>Material &amp; Equipment</b>	<b>%</b>
Material & Equipment Markup Over Cost	20%

- 2.3. The total amount of compensation for Supplemental Services shall not exceed the amount set forth in Section 1.2 of this Exhibit B.
- 2.4. The City reserves the right to request a fixed priced quote in lieu of time and materials. Any fixed price quotes shall be consistent with the agreed-upon supplemental service rates in Section 2.2 above and must be good for at least 90 days.
- 2.5. For all Supplemental Services, the Contractor must first submit a written quote to the City. The quote must be approved by the City through an executed Supplemental Services Work Order Form (Exhibit A-5) prior to any work being performed

### 3. Monthly Invoice

Contractor shall submit to City a monthly invoice within fifteen (15) working days of the last day of each month, in arrears, for payment for services performed pursuant to this Agreement. The

monthly invoice shall include a statement of work performed during the month. City shall review the monthly invoice submitted by Contractor and within ten (10) working days of receipt of the invoice, City shall notify Contractor of any discrepancies or deficiencies in said invoice.

The City shall incur no obligation for out of scope's work that is not authorized in advance in writing. These monthly invoices shall provide a breakdown of cost of the work performed and shall have an attachment itemizing the work for each of the following:

### **3.1. Base Services**

The Contractor shall invoice the City of San Jose for maintenance and repair services, preventive maintenance services and callback services at the end of each calendar month in which the work was performed in accordance with the Exhibit A-1, "Scope of Services", and shall be paid for actual services performed per the monthly payment schedule as set forth in Exhibit A-2.

Contractor shall also submit copies of work tags with monthly invoices. Work tag shall include date, facility, time-in, time-out, and ID numbers of equipment serviced.

### **3.2. Supplemental Services**

The Contractor shall be reimbursed for the labor and materials required to complete Supplemental Service tasks in accordance with the fully loaded labor rates specified in the Schedule. The Contractor shall be reimbursed for the materials used in the performance of Supplemental Services at the agreed upon mark-up for parts/materials. The Contractor shall not invoice the City for any work unless written approval by the authorized City staff has been received after all the work described has been completed to the satisfaction of the authorized City staff.

## **4. Payment to Contractor**

- 4.1. Except as otherwise provided in this Agreement, City shall make monthly payments within ten (10) business days of City's approval of Contractor's invoice. If City makes any payments or incurs any costs for which City is entitled to reimbursement from any payment otherwise due to Contractor from City, City may deduct such reimbursement from any payment otherwise due to Contractor from City. City shall submit to Contractor written documentation in support of such deduction upon Contractor's request. In the event City does not deduct such reimbursement from Contractor's payment but submits to Contractor an invoice for reimbursement, Contractor shall reimburse City within thirty (30) days of receipt of such invoice.
- 4.2. For work deemed by the City as not meeting the requirements set forth in Section 8, "Equipment Performance Requirements" and Section 9, "Service Level Requirements" of Exhibit A-1, "Scope of Services", the City shall withhold monthly payments or percentages thereof for work not completed, or until work is completed as per contract specifications. The City shall withhold monthly payments or percentages thereof for work that is not completed on schedule.
- 4.3. Any City facilities or City property damaged by the Contractor shall be assessed by the City and repaired by the City or qualified contractors at the City's sole discretion. The City shall deduct cost of repairs from payments due to Contractor or bill the Contractor directly for repair costs incurred by the City.

## 5. Renewal Period Compensation

- 5.1. After the Initial Term, the City reserves the right to extend the term of this Agreement pursuant to Section 2.2 ("Options to Extend") for ongoing services at the same rates as the final year of the Initial Term unless otherwise quoted and agreed to in writing by the Parties.
- 5.2. **Price Adjustments.** The Contractor may request adjustments to the compensation rates 60 days prior to the start of a new twelve-month option term. Price adjustments are subject to City's approval, and shall be calculated as follows:

### 5.2.1. CPI Adjustment

The base for computing the adjustment shall be the following Consumer Price Index for All Urban Consumers published by the United States Department of Labor Statistics ("Index"):

CPI-All Urban Consumers (Current Series)

Series Id: CUUR0000SA0, Not Seasonally Adjusted

Series Title: All items in U.S. city average, all urban consumers, not seasonally adjusted

Area: U.S. city average

Item: All items

Base Period: 1982-84=100

The index reference shall be the Index that is published most immediately preceding the commencement of the most recent annual anniversary of the Agreement ("Extension Index"), which shall be compared with the Index published twelve months prior or to the Index published at a point in time as mutually agreed upon between both parties ("Beginning Index").

If the Extension Index published has increased over or decreased under the Beginning Index, the compensation rate change shall be calculated by determining the percent change between the two periods, and multiplying the compensation rates from the previous period by the percent change. Upon adjustment of the compensation rates, the parties shall immediately execute a written amendment to the Agreement setting forth the new compensation rates, and attach the same as a revised exhibit to the Agreement.

If the Index is changed so that the base year differs from that used as of the month immediately preceding the Agreement's commencement date, the Index shall be converted in accordance with the conversion factor published by the United States Department of Labor, Bureau of Labor Statistics. If the Index is discontinued or revised during the term of the Agreement such other government index or computation with which it is replaced shall be used to obtain substantially the same result as would be obtained if the Index had not been discontinued or revised.

The preceding provision of this Section notwithstanding, the adjustment of any compensation rate for any twelve-month period shall not exceed 3%.

For the purpose of illustration only, the following example provides the computation of a percent change:

CPI for current period	232.945	
Less CPI for previous period	229.815	
Equals index point change	3.130	
Divided by previous period CPI	229.815	
Equals	0.0136	
Result multiplied by 100	0.0136 x 100	
Equals percent change	1.4%	

## EXHIBIT C INSURANCE REQUIREMENTS

Contractor, at Contractor's sole cost and expense, shall procure and maintain for the duration of this Agreement, insurance against claims for injuries to persons or damages to property which may arise from, or in connection with, the performance of the services hereunder by the Contractor, its agents, representatives, employees or subcontractors or suppliers. The cost of such insurance shall be included in the Contractor's bid.

### 1 Minimum Scope and Limit of Insurance

There shall be no endorsements reducing the scope of coverage required below unless approved by the City's Risk Manager.

Type of Insurance	Minimum Limit
<p><b>1. Commercial General Liability</b></p> <p>The coverage provided by Insurance Services Office "occurrence" form CG 0001, including coverages for contractual liability, personal injury, broadform property damage, independent contractors, products and completed operations.</p>	<p>\$2,000,000 per occurrence for bodily injury, personal injury and property damage or \$5,000,000 annual aggregate</p>
<p><b>2. Automobile Liability</b></p> <p>The coverage provided by Insurance Services Office form number CA 0001. Coverage shall be included for all owned, non-owned and hired automobiles.</p>	<p>\$1,000,000 combined single limit per accident for bodily injury and property damage <u>or</u> waiver of Automobile Liability coverage is permitted if Contractor is not performing services on City Property and signs written waiver</p>
<p><b>3. Workers' Compensation and Employer Liability</b></p> <p>As required by the Labor Code of the State of California.</p>	<p>Not less than \$1,000,000 each claim and annual aggregate</p>

### 2 Deductibles and Self-Insured Retentions

Any deductibles or self-insured retentions must be declared to, and approved by, the City's Risk Manager. At the option of the City, either: the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects the City, its officials, employees, agents and contractors; or the Contractor shall procure a bond guaranteeing payment of losses and related investigations, claim administration and defense expenses in an amount specified by the City's Risk Manager.

### 3 Other Insurance Provisions

The policies are to contain, or be endorsed to contain, the following provisions:

**3.1. General Liability and Automobile Liability Coverages**

- a. The City, its officials, employees, and agents are to be covered as additional insureds as respects: liability arising out of activities performed by, or on behalf of, the Contractor; products and completed operations of the Contractor; premises owned, leased or used by the Contractor; or automobiles owned, leased, hired or borrowed by the Contractor. The coverage shall contain no special limitations on the scope of protection afforded to the City, its officials, employees, and agents.
- b. The Contractor's insurance coverage shall be primary insurance as respects the City, its officials, employees, and agents. Any insurance or self-insurance maintained by the City, its officials, employees, and agents shall be excess of the contractor's insurance and shall not contribute with it.
- c. Any failure to comply with reporting provisions of the policies shall not affect coverage provided to the City, its officials, employees, or agents.
- d. Coverage shall state that the Contractor's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.
- e. Coverage shall contain a waiver of subrogation in favor of the City, its officials, employees, and agents.

**3.2. Workers' Compensation and Employers Liability**

Coverage shall be endorsed to state carrier waives its rights of subrogation against the City, its officials, and agents.

**3.3. All Coverages**

Each insurance policy required by this clause shall be endorsed to state that coverage shall not be suspended, voided, canceled, reduced in coverage or in limits except after thirty (30) days' prior written notice has been given to the City; except that ten (10) days' prior written notice shall apply in the event of cancellation for non-payment of premium..

**4 Acceptability of Insurance**

Insurance is to be placed with insurers acceptable to the City's Risk Manager.

**5 Verification of Coverage**

**5.1.** Contractor shall furnish the City with certificates of insurance and with original endorsements affecting coverage required by this clause. The certificates and endorsements for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf.

**5.2.** Copies of all the required endorsements shall be attached to the Certificate of Insurance which shall be provided by the Contractor's insurance company as evidence of the stipulated coverages.

**5.3.** Proof of insurance shall be either emailed in pdf format to: Riskmgmt@sanjoseca.gov, or mailed to the following postal address (or any subsequent email or postal address as may be directed in writing by the Risk Manager):

City of San José – Finance Department  
Risk & Insurance  
200 East Santa Clara St., 14th Floor  
San José, CA 95113-1905

## **6 Subcontractors**

Contractors shall include all subcontractors as insureds under its policies or shall obtain separate certificates and endorsements for each subcontractor.

## EXHIBIT D-1

### WAGE REQUIREMENTS AND INFORMATION

Pursuant to City of San Jose Prevailing Wage and Living Wage Policies, Contractor and any subcontractor shall be obligated to pay not less than the prevailing wage or living wage in accordance with the requirements of this policy document, and the Wage Determination as indicated in **Exhibit 1** to this attachment.

#### I. CITY COUNCIL WAGE POLICIES

##### A. Living Wage Policy

Under City Council Policy 3-3, contractors who are awarded certain City service and labor contracts are required to pay a minimum level of compensation and provide a minimum number of days of compensated time off to covered employees who work on these projects.

Living wages shall mean the wages paid under a collective bargaining agreement between the Contractor and a recognized union representing employees who will perform services pursuant to the Agreement.

If the wage rates set forth in the collective bargaining agreement fall below the then current Living Wage Rate set by the City of San Jose, the required rate of pay shall be the City's Living Wage Rate unless the collective bargaining agreement expressly provides that the agreement shall supersede the requirements of the Living Wage Policy.

If there is no collective bargaining agreement as described above, not less than the following Living Wage Rate must be paid to covered employees performing work identified in the applicable wage determination issued by the City of San Jose's Office of Equality Assurance.

1. If health insurance benefits are provided, a wage of not less than **Twenty Dollars and Fourteen Cents (\$20.14)** per hour.
2. If health insurance benefits are not provided, a wage of not less than **Twenty-One Dollars and Thirty-Nine Cents (\$21.39)** per hour.

Contractors shall provide twelve (12) days of compensated time off to full time covered employees, and six (6) days of compensated time off to part time covered employees. Paid holidays, paid sick days, paid



vacation and paid personal days are allowed to count towards the 12 or 6 required days.

## **B. Prevailing Wage Policy**

California Labor Code and/or Resolutions of the City of San Jose require the payment of not less than the general rate of per diem wages and rates for holiday and overtime and adherence to all labor standards and regulations.

Prevailing Wages established by the California Department of Industrial Relations shall be the General Prevailing Wage Determination made by the Director of Industrial Relations pursuant to California Labor Code Part 7, Chapter 1, Article 2, Sections 1770, 1773 and 1773.1. The General Prevailing Wage Rates may be adjusted throughout the term of this Agreement.

Prevailing Wages established by the City of San Jose shall mean the wages paid under a collective bargaining agreement between the Contractor and a recognized union representing workers who perform services pursuant to this agreement; or

If there is no collective bargaining agreement as described above, not less than the prevailing rate of per diem wages for the employee craft/classification as determined by the City of San Jose's Office of Equality Assurance.

The City's Prevailing Wage will be subject to annual adjustment on the anniversary date of the agreement. Adjustment will be based on the U.S. Department of Labor/Bureau of Labor Statistics Consumer Price Index, All Items, for all Urban Consumers [CPI-U] for San Francisco-Oakland-San Jose.

Please see **Attachment 1** for Prevailing Wage Determination

## **C. Reports**

The Office of Equality Assurance will monitor the payment of prevailing and living wages by requiring the awarded Contractor and all Subcontractors to file a LABOR COMPLIANCE WORKFORCE STATEMENT and LABOR COMPLIANCE FRINGE BENEFIT STATEMENT with supporting documentation.

The awarded Contractor and Subcontractors shall also report such other additional information, including certified payrolls, as requested by the Director of Equality Assurance to ensure adherence to the Policies.

Labor compliance statements must be filed in the Office of Equality Assurance within 10 days of execution of this Agreement at the address below.

City of San Jose  
Office of Equality Assurance  
200 East Santa Clara Street  
Fifth Floor  
San Jose, CA 95113  
Phone: 408-535-8430

**NOTE: Exhibits 2 and 3** are provided for informational purposes only.

## **II. LIVING WAGE POLICY PROVISIONS**

On November 17, 1989, by Resolution No. 68554, amended on June 8, 1999 by Resolution No. 68900, amended on May 27, 2003 by Resolution No. 71584, amended on June 4, 2013 by Resolution No. 76653 and amended on January 28, 2014 by Resolution No. 76911 the San Jose City Council adopted its Living Wage Policy to meet the employment and economic development needs of low wage workers by mandating:

1. A minimum level of compensation and a minimum number of days of compensated time off for workers employed by contractors and subcontractors who are awarded certain City of San Jose service and labor contracts with an expenditure in excess of \$20,000 and recipients who receive direct monetary financial assistance from the City in the amount of \$100,000 or more in any twelve month period, excluding non-profit corporations;
2. The provision of health insurance benefits or the ability to afford health insurance;
3. Retention of employees when certain new contractors take over a continuing City service;
4. An environment of labor peace; and
5. Employee Work Environment Evaluation (Third Tier Review)

### **A. WAGE REQUIREMENTS**

1. Covered Employees Defined:

For the purpose of this provision, Covered Employees means any person employed by the Contractor or Subcontractor who meets the following conditions:

- a) The person does not provide volunteer services that are uncompensated except for reimbursement of expenses such as meals, parking or transportation;
- b) The person expends at least half of his/her time on work for the City;
- c) The person is at least eighteen (18) years of age; and
- d) The person is not in training for the period of training specified under training standards approved by the City of San Jose.

**B. EMPLOYEE WORK ENVIRONMENT EVALUATION**

An Employee Work Environment Evaluation looks into a Proposer's history as an employer and work condition commitments.

The Contractor has completed and separately submitted the Employee Work Environment Questionnaire to the City.

**C. ENFORCEMENT**

1. General

Contractor acknowledges it has read and understands that, pursuant to the terms and conditions of this Contract, it is required to pay workers either a prevailing or living wage ("Wage Provision") and to submit certain documentation to the City establishing its compliance with such requirement. ("Documentation Provision.") Contractor further acknowledges the City has determined that the Wage Provision promotes each of the following (collectively "Goals"):

- a) It protects City job opportunities and stimulates the City's economy by reducing the incentive to recruit and pay a substandard wage to labor from distant, cheap-labor areas.
- b) It benefits the public through the superior efficiency of well-paid employees, whereas the payment of inadequate

compensation tends to negatively affect the quality of services to the City by fostering high turnover and instability in the workplace.

- c) Paying workers a wage that enables them not to live in poverty is beneficial to the health and welfare of all citizens of San Jose because it increases the ability of such workers to attain sustenance, decreases the amount of poverty and reduces the amount of taxpayer funded social services in San Jose.
- d) It increases competition by promoting a more level playing field among contractors with regard to the wages paid to workers.

2. Remedies for Contractor's Breach of Prevailing Wage/Living Wage Provisions

- a) **Withholding Of Payment:** Contractor agrees that the Documentation Provision is critical to the City's ability to monitor Contractor's compliance with the Wage Requirement and to ultimately achieve the Goals. Contractor further agrees its breach of the Documentation Provision results in the need for additional enforcement action to verify compliance with the Wage Requirement. In light of the critical importance of the Documentation Provision, the City and Contractor agree that Contractor's compliance with this Provision, as well as the Wage Requirement, is an express condition of City's obligation to make each payment due to the Contractor pursuant to this Agreement. The City is not obligated to make any payment due the Contractor until Contractor has performed all of its obligations under these Provisions. This Provision means that City can withhold all or part of a payment to Contractor until all required documentation is submitted. Any payment by the City despite Contractor's failure to fully perform its obligations under these provisions shall not be deemed to be a waiver of any other term or condition contained in this Agreement or a waiver of the right to withhold payment for any subsequent breach of the Wage Provision or the Documentation Provision.
- b) **Restitution:** Contractor agrees that in the event of a breach of its obligations it will pay any amounts underpaid in violation of the required payments and City's administrative costs and liquidated damages and, in the case of financial assistance, to refund any sums disbursed by the City.

- c) **Liquidated Damages For Breach Of Wage Provision:** Contractor agrees its breach of the Wage Requirement would cause the City damage by undermining the Goals, and City's damage would not be remedied by Contractor's payment of restitution to the workers who were paid a substandard wage. Contractor further agrees that such damage would increase the greater the number of employees not paid the applicable prevailing/living wage and the longer the amount of time over which such wages were not paid. The City and Contractor mutually agree that making a precise determination of the amount of City's damages as a result of Contractor's breach of the Wage Requirement would be impractical and/or extremely difficult. Therefore, the parties agree that, in the event of such a breach, Contractor shall pay to the City as liquidated damages the sum of three (3) times the difference between the actual amount of wages paid and the amount of wages that should have been paid.
  
- d) **Additional Remedies:** Contractor agrees that in addition to the remedies set forth above City retains the right to suspend or terminate the Agreement for cause and to debar Contractor or subcontractors from future City contracts and/or deem the recipient ineligible for future financial assistance.

#### **D. AUDIT RIGHTS**

All records or documents required to be kept pursuant to this Contract to verify compliance with the Wage Provision shall be made available for audit at no cost to City, at any time during regular business hours, upon written request by the City Attorney, City Auditor, City Manager, or a designated representative of any of these officers. Copies of such records or documents shall be provided to City for audit at City Hall when it is practical to do so. Otherwise, unless an alternative is mutually agreed upon, the records or documents shall be available at Contractor's address indicated for receipt of notices in this Contract.

#### **E. COEXISTENCE WITH ANY OTHER EMPLOYEE RIGHTS**

These provisions shall not be construed to limit an employee's ability to bring any legal action for violation of any rights of the employee.



**Attachment 1**

**City of San Jose Classification Determination**

**CONTRACT SCOPE:** Elevator and Escalator Maintenance Services at SJC and Citywide Locations

**ISSUE DATE:** December 4, 2017

Contracts governed by both the City of San José’s Living Wage Policy (Council Policy 3-3) and its Prevailing Wage Policy (Resolution No. 61144) are subject to the Policy with the higher wage requirements. **The prevailing wage rates for this contract are contained in the General Prevailing Wage Determination 2017-2 and Predetermined Increases issued by the Director of Industrial Relations.** A copy of the Wage Determination can be obtained from the Office of Equality Assurance at 200 East Santa Clara Street, 5<sup>th</sup> Floor, San Jose CA 95113 or by phone at 408-535-8430.

**Prevailing Wage Classifications**

Work Description	Craft Classification(s)
Elevator/Escalator Repair and Maintenance	Craft: Elevator Constructor, Mechanic [Northern California Basic Trade Determinations, Page 38]  Craft: Elevator Constructor, Helper [Northern California Basic Trade Determinations, Pg 38]
General Labor	Laborer Group 3 Page 49/DIR Wage Deter. Exp. 6/24/18**

For any work not expressly identified, please contact the Office of Equality Assurance at 408-535-8430.

**30 Hours and Days of Work**

Employees shall not be employed more than eight (8) hours in any workday or more than 40 hours in any workweek unless the employee receives one and one-half (1 ½) times such employee’s regular rate of pay for all hours worked over 40 hours in the workweek. Employment

beyond eight (8) hours in any workday or more than six (6) days in any workweek is permissible provided the employee is compensated for such overtime at not less than:

- (a) One and one-half (1 ½) times the employee's regular rate of pay for all hours worked in excess of eight (8) hours up to and including 12 hours in any workday, and for the first eight (8) hours worked on the seventh (7<sup>th</sup>) consecutive day of work in a workweek; and
- (b) Double the employee's regular rate of pay for all hours worked in excess of 12 hours in any workday and for all hours worked in excess of eight (8) on the seventh (7<sup>th</sup>) consecutive day of work in a workweek.

*Elevator and Escalator Maintenance Services at SJC and Citywide Locations*

Office of Equality Assurance, 200 East Santa Clara Street, Fifth Floor, San Jose CA 95113-1905 tel 408-535-8430



**LABOR COMPLIANCE  
WORKFORCE STATEMENT**

**CONTRACTOR NAME:** \_\_\_\_\_

**CONTRACT:** \_\_\_\_\_

In the chart below, list the name, prevailing wage or living wage classification(s) to be used, rate of pay and hire date for each employee expected to work on the above contract. See example below.

<b>EMPLOYEE NAME</b>	<b>CRAFT/TRADE CLASSIFICATION</b>	<b>BASIC HOURLY RATE OF PAY</b> (On City of San Jose Contract)	<b>DATE OF HIRE</b> (Indenture Date If Apprentice)
<i>Example: Bob Jones</i>	<i>Recycle Driver</i>	<b>\$24.28</b>	<b>6/1/2002</b>

Questions regarding classifications allowed on San Jose projects should be directed to the Office of Equality Assurance at 408-535-8430.



**ATTACHMENT D-3**



**LABOR COMPLIANCE  
FRINGE BENEFIT STATEMENT**

**CONTRACTOR NAME:** \_\_\_\_\_

**CONTRACT:** \_\_\_\_\_

I certify under penalty of perjury that fringe benefits are paid to the approved plans, funds, or programs as listed below:

Classification	Fringe Benefit Hourly Amount	Name of the Plan or Fund (Attach Premium Transmittal)
1. _____ <div style="border: 1px solid black; padding: 5px; background-color: #f0f0f0;"> <p><b>Documentation of Plan contribution <u>must</u> be returned with this statement</b></p> <p>Please attach a copy of your most recent transmission into each medical, pension, or profit sharing plan account indicating worker name and amount of contribution.</p> </div>	Vacation	_____
	\$	_____
	Health & Welfare	_____
	\$	_____
	Pension	_____
	\$	_____
2. _____	Vacation	_____
	\$	_____
	Health & Welfare	_____
	\$	_____
	Pension	_____
	\$	_____
3. _____	Vacation	_____
	\$	_____
	Health & Welfare	_____
	\$	_____
	Pension	_____
	\$	_____
	Apprentice	_____
	\$	_____
	Other (specify)	_____
	\$	_____

All (or some) fringes are paid in cash by adding the amount to the employee's basic hourly rate.

\_\_\_\_\_  
Company Name (Please Print)

\_\_\_\_\_  
Name and Title (Please Print)

\_\_\_\_\_  
Date

\_\_\_\_\_  
Signature

**ATTACHMENT D-4**



**LABOR COMPLIANCE ADDENDUM**

<b>AGREEMENT TITLE:</b>	Agreement for Elevator Maintenance Services for Citywide Locations between the City of San José and A Lewis Enterprises, Inc.
<b>CONTRACTOR Name and Address:</b>	A Lewis Enterprises 1064 Horizon Drive, Suite 5 Fairfield, CA 94533

By executing this Addendum, Contractor acknowledges and agrees that the work performed pursuant to the above referenced Agreement or Service Order is subject to all applicable provisions.

**Payment of Minimum Compensation to Employees.** Contractor shall be obligated to pay not less than the General Prevailing Wage Rate and/or Living Wage Rate as indicated in the attached Exhibit(s) titled “**Work Classification and/or Living Wage Determination.**”

**A. Prevailing Wage Requirements.** California Labor Code and/or Resolutions of the San Jose City Council require the payment of not less than the general prevailing rate of per diem wages and rates for holiday and overtime and adherence to all labor standards and regulations. The General Prevailing Wage Rates may be adjusted throughout the term of this Agreement. Notwithstanding any other provision of this Agreement, Contractor shall not be entitled to any adjustment in compensation rates in the event there are adjustments to the General Prevailing Wage Rates.

**B. Living Wage Requirements.** Any person employed by Contractor or subcontractor or City financial recipient or any sub recipient whose compensation is attributable to the City’s financial assistance, who meets the following requirements is considered a covered employee. The employee: 1) is not a person who provides volunteer services, that are uncompensated except for reimbursement of expenses such as meals, parking or transportation; 2) spends at least half of his or her time on work for the City; 3) is at least eighteen (18) years of age; and 4) is not in training for the period of training specified under training standards approved by the City.

**C. Reports.** Contractor shall file a completed and executed copy of this Addendum with the Finance Department. Upon award the Finance Department/Purchasing Division shall provide the contractor with compliance documents to be completed and returned (with supporting documentation) to the Office of Equality Assurance. **These documents must be returned within 10 days of receipt.** Contractor shall not perform on site work on this contract until labor compliance documents are filed. Contractor shall also report additional information, including certified payrolls, as requested by Director of Equality Assurance to assure adherence to the Policy.

**D. Coexistence with Any Other Employee Rights.** These provisions shall not be construed to limit an employee's ability to bring any legal action for violation of any rights of the employee.

**E. Audit Rights.** All records or documents required to be kept pursuant to this Agreement to verify compliance with the Wage Requirement shall be made available for audit at no cost to City, at any time during regular business hours, upon written request by the City Attorney, City Auditor, City Manager, or a designated representative of any of these officers. Copies of such records or documents shall be provided to City for audit at City Hall when it is practical to do so. Otherwise, unless an alternative is mutually agreed upon, the records or documents shall be available at Contractor's address indicated for receipt of notices in this Contract.

**F. Enforcement.**

1. **General.** Contractor acknowledges it has read and understands that, pursuant to the terms and conditions of this Agreement, it is required to comply with the Wage Requirement and to submit certain documentation to the City establishing its compliance with such requirement. ("Documentation Provision.") Contractor further acknowledges the City has determined that the Wage Requirement promotes each of the following (collectively "Goals"):

- a. It protects City job opportunities and stimulates the City's economy by reducing the incentive to recruit and pay a substandard wage to labor from distant, cheap-labor areas.
- b. It benefits the public through the superior efficiency of well-paid employees, whereas the payment of inadequate compensation tends to negatively affect the quality of services to the City by fostering high turnover and instability in the workplace.
- c. Paying workers a wage that enables them not to live in poverty is beneficial to the health and welfare of all citizens of San Jose because it increases the ability of such workers to attain sustenance, decreases the amount of poverty and reduces the amount of taxpayer funded social services in San Jose.
- d. It increases competition by promoting a more level playing field among contractors with regard to the wages paid to workers.

2. **Remedies for Contractor's Breach of Prevailing Wage/Living Wage Provisions.**

- a. **WITHHOLDING OF PAYMENT:** Contractor agrees that the Documentation Provision is critical to the City's ability to monitor Contractor's compliance with the Wage Requirement and to ultimately achieve the Goals. Contractor further agrees its breach of the Documentation Provision results in the need for additional enforcement action to verify compliance with the Wage Requirement. In light of the critical importance of the Documentation Provision, the City and Contractor agree that Contractor's compliance with this Provision, as well as the Wage Requirement, is an express condition of City's obligation to make each payment due to the Contractor pursuant to this Agreement. **THE CITY IS NOT OBLIGATED TO MAKE ANY PAYMENT DUE THE CONTRACTOR UNTIL CONTRACTOR HAS PERFORMED ALL OF ITS OBLIGATIONS UNDER THESE PROVISIONS. THIS PROVISION MEANS THAT CITY CAN WITHHOLD**

**ALL OR PART OF A PAYMENT TO CONTRACTOR UNTIL ALL REQUIRED DOCUMENTATION IS SUBMITTED.**

Any payment by the City despite Contractor's failure to fully perform its obligations under these provisions shall not be deemed to be a waiver of any other term or condition contained in this Agreement or a waiver of the right to withhold payment for any subsequent breach of the Wage Requirement or the Documentation Provision.

- b. **RESTITUTION:** Require the employer to pay any amounts underpaid in violation of the required payments and City's administrative costs and liquidated damages and, in the case of financial assistance, to refund any sums disbursed by the City.
- c. **SUSPENSION OR TERMINATION:** Suspend and/or terminate Agreement for cause;
- d. **DEBARMENT:** Debar Contractor or subcontractor from future City contracts and/or deem the recipient ineligible for future financial assistance.
- e. **LIQUIDATED DAMAGES FOR BREACH OF WAGE PROVISION:** Contractor agrees its breach of the Wage Requirement would cause the City damage by undermining the Goals, and City's damage would not be remedied by Contractor's payment of restitution to the workers who were paid a substandard wage. Contractor further agrees that such damage would increase the greater the number of employees not paid the applicable prevailing wage and the longer the amount of time over which such wages were not paid. The City and Contractor mutually agree that making a precise determination of the amount of City's damages as a result of Contractor's breach of the Wage Requirement would be impracticable and/or extremely difficult. **THEREFORE, THE PARTIES AGREE THAT, IN THE EVENT OF SUCH A BREACH, CONTRACTOR SHALL PAY TO THE CITY AS LIQUIDATED DAMAGES THE SUM OF THREE (3) TIMES THE DIFFERENCE BETWEEN THE ACTUAL AMOUNT OF WAGES PAID AND THE AMOUNT OF WAGES THAT SHOULD HAVE BEEN PAID.**

City

Contractor

By \_\_\_\_\_  
Name: Jennifer Cheng  
Title: Purchasing Officer  
Date: \_\_\_\_\_

By \_\_\_\_\_  
Name:  
Title:  
Date: \_\_\_\_\_

**EXHIBIT E  
CHANGE ORDER FORM**

CHANGE ORDER # \_\_\_

<p><b>Pursuant to Section 7 of the Agreement for the _____ System between _____ and the City of San José, the Agreement is hereby amended as follows:</b></p> <p><i>(The following language is provided as an example of how to complete this form.)</i></p>		
<p>1. Contractor shall provide the following additional services at the costs indicated below:</p>		
TOTAL		
<p>2. The following services, products or deliverables are hereby deleted and the associated costs in amounts set forth below are also deleted.</p>		
TOTAL		
<p>3. Exhibit ___ is hereby amended to read as set forth in the Revised Exhibit ___ which is attached hereto.</p>		
<p>4. All of the terms and conditions of the Agreement not modified by Change Order shall remain in full force and effect.</p>		
	Total Cost of Change	
	Total Credit of Change	
	Previous Amendments and/or Change Orders	
	Original Contract	
<p><b>ACCEPTANCE</b></p> <p>Contractor hereby agrees to accept the amount set forth herein as payment in full of the work described and further agrees that Contractor is entitled to no additional time or compensation for such work other than as set forth herein.</p> <p><b>Contractor</b></p> <p>_____</p> <p style="text-align: center;">Date</p>	<p><b>APPROVED AS TO FORM</b></p> <p>_____</p> <p>{Name} Title</p> <p><b>City of San José</b></p> <p>_____</p> <p>Name _____ Date _____ Title _____</p>	

**EXHIBIT F**  
**Notice of Exercise of Option to Extend Agreement**

<b>AGREEMENT TITLE:</b>	
<b>CONTRACTOR Name and Address:</b>	
<b>DATE:</b>	

*(date the notice is sent must be consistent with the time for exercise set forth in Agreement)*

Pursuant to Section \_\_\_\_\_ of the Agreement referenced above, the City of San José hereby exercises its option to extend the term under the following provisions:

<b>OPTION NO.</b>	
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**NEW OPTION TERM**

Begin date:	
End date:	

**CHANGES IN RATE OF COMPENSATION**

<b>Percentage change in CPI upon which adjustment is based:</b>	
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Pursuant to Section \_\_\_\_ of the Agreement the Rates of Compensation are hereby adjusted as follows:

*(use attachment if necessary)*

<b>MAXIMUM COMPENSATION for New Option Term:</b>	
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For the option term exercised by this Notice, City shall pay Contractor an amount not to exceed the amount set forth above for Contractor's services and reimbursable expenses, if any. The undersigned signing on behalf of the City of San José hereby certifies that an unexpended appropriation is available for the term exercised by this Notice, and that funds are available as of the date of this signature.

<p><b>CITY OF SAN JOSÉ</b>  a municipal corporation</p> <p>By _____  Name:  Title:  Date:</p>
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