

**SECOND AMENDMENT TO THE AGREEMENT FOR AIRPORT ELEVATOR AND  
ESCALATOR MAINTENANCE SERVICES  
BETWEEN THE CITY OF SAN JOSE  
AND SCHINDLER ELEVATOR CORPORATION**

This Second Amendment to the Agreement for Elevator and Escalator Maintenance Services is entered as of \_\_\_\_\_, 2010 by the City of San Jose, a municipal corporation ("City"), and Schindler Elevator Corporation, a Delaware corporation authorized to do business in the state of California ("Contractor").

**RECITALS**

**WHEREAS**, on July 1, 2007, City and Contractor entered into an agreement entitled "Agreement for Airport Elevator and Escalator Maintenance Services Between the City of San Jose and Schindler Elevator Corporation" ("Agreement"); and

**WHEREAS**, under Resolution No. 73899, the San Jose City Council authorized the Director of Finance to execute amendments to the Agreement to add or delete elevators or escalators as required; and

**WHEREAS**, on December 1, 2009, City and Contractor entered into a First Amendment to the Agreement to add elevator maintenance services for Terminal A and Terminal B to the scope of services provided under the Agreement and correspondingly increase compensation; and

**WHEREAS**, City and Contractor now wish to modify the Agreement to make certain changes in compensation in exchange for increasing the number of option years;

**NOW THEREFORE**, the parties agree to amend the Agreement as follows:

1. Section 3.2 of the Agreement, entitled "Options", is deleted in its entirety and replaced with the following:

**"3.2 Options**

City has the right to extend the term of this Agreement for six (6) additional one-year periods (the "Additional Terms"), based upon the same conditions of the Initial Term, subject to adjustments for compensation as set forth in Exhibit C. City shall notify Contractor in writing of its exercise of its option for an Additional Term no less than thirty (30) days prior to the end of the then current Term."

2. Exhibit B (as revised by the First Amendment), entitled "Schedule of Performance", is amended and replaced in its entirety with Second Revised Exhibit B, attached hereto and incorporated herein.
3. Exhibit C (as revised by the First Amendment), entitled "Compensation", is amended and replaced in its entirety with Second Revised Exhibit C, attached hereto and incorporated herein.

4. All of the terms and conditions of the Agreement (as modified by the First Amendment) not modified by this Second Amendment shall remain in full force and effect.

WITNESS THE EXECUTION HEREOF on the day and year first written above.

APPROVED AS TO FORM:

City of San José  
a municipal corporation

\_\_\_\_\_  
Sandra Lee  
Deputy City Attorney

By \_\_\_\_\_  
Name: Mark Giovannetti  
Title: Purchasing Officer  
Date: \_\_\_\_\_

Schindler Elevator Corporation  
a Delaware corporation

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

**SECOND REVISED EXHIBIT B  
SCHEDULE OF PERFORMANCE**

**1. Airport Elevator and Escalator Service Areas**

1.1 The following areas are included in this Agreement. It is the responsibility of Contractor to become acquainted with each of these sites and requirements for maintenance.

**A. Terminal A – Norman Y. Mineta International Airport**

<b>EQUIPMENT #</b>	<b>I.D. #</b>	<b>MFR.</b>	<b>TYPE</b>	<b>LOCATION</b>
1. EL-A1	096607	Dover	Passenger	Baggage Claim - North
2. EL-A2	096608	Dover	Passenger	Baggage Claim - North
3. EL-A3	086444	Montgomery	Passenger	Baggage Claim - Center
4. EL-A4	086445	Montgomery	Passenger	Baggage Claim - Center
5. EL-A5	096615	Dover	Passenger	Baggage Claim - South
6. EL-A6	096614	Dover	Passenger	Baggage Claim - South
7. EL-A7	086442	Montgomery	Passenger	South End – Terminal A
8. EL-A8	086443	Montgomery	Passenger	North End – Terminal A
9. EL-A11	096620	Schindler	Freight	Gate - A9
10. EL-A10	096619	Dover	Passenger	Gate - A1
11. ESC-1RT	151606	Schindler	Escalator	Departure – North End
12. ESC-2L	151605	Schindler	Escalator	Departure – South End
13. ESC-3	086446	Montgomery	Escalator	Baggage Claim–Up Esc.
14. ESC-4	086447	Montgomery	Escalator	Baggage Claim–Dn. Esc.
15. ESC-1	151716	Schindler	Escalator	South End-Departure
16. ESC-2	151717	Schindler	Escalator	South End-Departure
17. EL-A9	151612	Motion	Freight	Near Gate A7

**B. International Arrival (FIS) Building**

<b>EQUIPMENT #</b>	<b>I.D. #</b>	<b>MFR.</b>	<b>TYPE</b>	<b>LOCATION</b>
1. ESC.1	124306	Montgomery	Escalator	Main Lobby
2. EL-01	129116	Kone	Passenger	South End-Rollup Gate
3. EL-02	129117	Kone	Passenger	Middle-Curbside
4. EL-03	129118	Kone	Passenger	North-SIDA Basement

**C. Terminal B – Norman Y. Mineta International Airport**

<b>EQUIPMENT #</b>	<b>I.D. #</b>	<b>MFR.</b>	<b>TYPE</b>	<b>LOCATION</b>
1. H2	151598	Motion	Elevator-Passenger	North End-Terminal B
2. J3	151599	Motion	Elevator-Passenger	South End-Terminal B
3. J2	151604	Motion	Elevator-Freight	Middle of Terminal B

## 1.2 Work Schedule and Reports

A proposed schedule for the three following month's work shall be prepared by the Contractor and presented to the City's Project Manager by the 20<sup>th</sup> day of each month for the January, April, July, and October quarters.

Any problems encountered that are unique or not covered by the contract documents shall be submitted to the City's Project Manager in writing.

All documented reports are due on a weekly basis or an agreed upon frequency with the City's Project Manager.

## 1.3 Schedule of Work

All work shall be completed Mondays through Fridays between the hours of 7:00am to 4:30pm or as specified or requested by the City's Project Manager for off-hours and/or graveyard shift.

1.4 Elevator and Escalator Maintenance Frequencies

	Daily	Weekly	Monthly	Quarterly	Semi Annual	Annual
<b>ELEVATORS:</b>						
Operation Check		X				
Doors		X				
Fire Service			X			
Controller			X			
Car Safeties				X		
Machine			X			
Governor					X	
Hydraulics		X				
Ropes					X	
Pits			X			
Buffers					X	
Pressure Relief Test						X
<i>For more detailed maintenance refer to Scope of Services Section 41.1 &amp; 41.2 Tasks 1-42 and 41.3 Task 1-26</i>						
<b>ESCALATORS:</b>						
Operation Check	X					
Lube Skirts		X				
Handrails			X			
Ballustrades			X			
Combs			X			
Pits			X			
Switches				X		
Brakes				X		
Chains					X	
<i>For more detailed maintenance refer to Scope of Services section 41.4 Tasks 1-43</i>						

## **2 ADDITION AND/OR DELETION OF AREAS REQUIRING ELEVATOR AND/OR ESCALATOR MAINTENANCE SERVICE**

- 2.1 The City at its discretion reserves the right to add or delete areas designated for elevator and/or escalator maintenance service. The City's Project Manager shall notify the Contractor in writing thirty (30) calendar days prior to any type of changes in service areas designated for service. Upon written notification by the City's Project Manager to the Contractor of an expansion or reduction in the contracted maintenance service area, the Contractor will adjust its pricing as outlined in Second Revised Exhibit C, sections 1.2. or 1.3, and present the adjusted pricing to the City's Project Manager for approval. Any and all changes in work scope will require a written response from Contractor addressing changes in pricing.

**SECOND REVISED EXHIBIT C**  
**COMPENSATION**

**1. COMPENSATION**

- 1.1 The maximum amount of compensation to be paid to Contractor, including both payment for professional services and reimbursable expenses, shall not exceed annually Two Hundred Thirty Five Thousand Eight Hundred Fifty Eight Dollars (\$235,858.00). Any hours worked and not approved by the City 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 City shall compensate Contractor for Airport Elevator and Escalator Maintenance Services according to the following schedule effective July 1, 2010:

<b>Maintenance Service Per Specifications</b>	<b>Time Period</b>	<b>Monthly Amount</b>	<b>Total Amount for FY10-11</b>
1A. Elevator & Escalator Maintenance Service  Renewal Option Year 3, Exercised at the same rates for monthly maintenance as 2009-2010 (no CPI increase) minus the two elevators that were closed in Terminal C on July 1, 2010	July 1, 2010 - December 31, 2010	\$19,817	\$118,902
1B. Elevator & Escalator Maintenance Service  Pursuant to this Second Amendment monthly maintenance rates will decrease for the remainder of Option Year 3	January 1, 2011 – June 30, 2011	\$17,836	\$106,956
2. Supplemental Service Amount			\$10,000
Total Not to Exceed Amount			\$235,858

Supplemental Repair Rates	Hourly Rate Straight Time	Hourly Rate Overtime	Hourly Rate Wknd/Holiday
	Mon-Sun 6:00am - 11:00pm	Mon-Fri 11:01pm - 5:59am	Sat-Sun/Holiday 11:01pm - 5:59am
1. Engineer	\$200.00	\$340.00	\$400.00
2. Elevator Repairman	\$200.00	\$340.00	\$400.00
3. Escalator Repairman	\$200.00	\$340.00	\$400.00
4. Additional Parts Markup	20%		

1.3 Monthly Cost For Equipment Maintenance By Elevator/Escalator (effective January 1, 2011)

EQUIPMENT ID	MONTHLY LABOR COST	MONTHLY OVERHEAD COST	TOTAL MONTHLY MAINTENANCE COST
<b>Terminal A:</b>			
Elevator EL-A1	\$409.38	\$370.31	\$779.69
Elevator EL-A2	\$409.38	\$370.31	\$779.69
Elevator EL-A3	\$404.26	\$370.31	\$774.57
Elevator EL-A4	\$404.26	\$370.31	\$774.57
Elevator EL-A5	\$414.51	\$370.31	\$784.82
Elevator EL-A6	\$414.51	\$370.31	\$784.82
Elevator EL-A7	\$304.86	\$370.31	\$675.16
Elevator EL-A8	\$304.86	\$370.31	\$675.16
Elevator EL-A11	\$156.51	\$141.60	\$298.11
Elevator EL-A10	\$156.51	\$141.60	\$298.11
Escalator ESC-1RT	\$466.70	\$370.31	\$837.00
Escalator ESC-2L	\$466.70	\$370.31	\$837.00
Escalator ESC-3	\$671.21	\$370.31	\$1,041.52
Escalator ESC-4	\$671.21	\$370.31	\$1,041.52
Escalator ESC-1	\$466.70	\$370.31	\$837.00
Escalator ESC-2	\$466.70	\$370.31	\$837.00
Elevator EL-A9	\$214.70	\$370.31	\$585.00
<b>Terminal B:</b>			
Elevator H2	\$214.70	\$370.31	\$585.00
Elevator J3	\$214.70	\$370.31	\$585.00
Elevator J2	\$393.80	\$370.31	\$764.10
<b>FIS Bldg:</b>			
Elevator-01	\$369.42	\$370.40	\$739.83
Elevator-02	\$369.42	\$370.40	\$739.83
Elevator-03	\$369.42	\$370.40	\$739.83

Escalator -1	\$671.21	\$370.40	\$1041.62
Total Monthly Charge			\$17,835.95

## 2. METHOD OF PAYMENT

### 2.1 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 will describe work completed during the month as defined in Second Revised Exhibit B, "Schedule of Performance". 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 Contractor shall submit separate invoices for Base Services and Additional Services (including Supplemental Services and Vandalism/Abuse Services) on a monthly basis for services completed, to the satisfaction of the respective Contracting Officer's Technical Representative (COTR) during the previous month. The City shall incur no obligation for out of scope work that is not authorized in advance in writing by City.

These monthly invoices shall be itemized to provide a breakdown of cost for all work according to the following:

#### A. BASE SERVICES

1. The Contractor shall invoice the City for maintenance and repair services, preventive maintenance services and call back services at the end of each calendar month in which the work was performed in accordance with the Specification, and shall be paid for actual services performed.
2. The City reserves the right to withhold a portion of the monthly payment to the extent the Contractor has not fulfilled the requirements of the Specification for the month in which the services were performed.
3. The Contractor shall invoice the City for the actual cost expended by the Contractor to purchase supplies and/or materials (**for a single item**) in excess of \$800.00 (Eight Hundred Dollars) to fulfill the requirements of the base services and which have been approved in writing by the City's Contracting Officer (CO) and/or COTR. (Any item costing \$800 or less will be included in the monthly maintenance cost and will not be reimbursable by City.) No combining of cost for multiple supplies and/or materials shall be permitted. This cost shall be invoiced to the City at the end of the calendar month in which the Contractor incurred it. Original invoice of parts purchased must be submitted to the City with other invoices for payment. Mark-ups by the Contractor will not be accepted.

4. Inspection Support Services: Inspection support services are part of the regular maintenance services under this Agreement. Contractor shall invoice the City only for the actual number of elevators, escalators, moving walkways and/or accessibility lifts for which inspection support work was completed to the satisfaction of the COTR during the month that the invoice covers. Contractor shall not invoice the City the monthly maintenance cost for any unit unless and until the unit has passed the ASME A17 Code Compliance Inspection. In the event a unit requires re-inspection(s) to pass the ASME A17 Code Compliance Inspection, the Contractor shall perform this inspection support service at no additional cost to the City.

B. 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 in Section 1.2, above. The Contractor shall be reimbursed for the materials used in the performance of Supplemental Services at Invoice plus 20 percent. The Contractor shall not invoice the City for any work unless a Call Order signed by the COTR has been issued by City and until after all the work described in the Call Order has been completed to the satisfaction of the COTR.

C. VANDALISM/ABUSE SERVICES

The Contractor shall be reimbursed for the labor and materials required to complete validated vandalism/abuse repairs in accordance with the fully loaded labor rates specified in the Schedule in Section 1.2, above. The Contractor shall be reimbursed for the materials used in the performance of vandalism/abuse repairs at Invoice plus 20 percent. The Contractor shall not invoice the City for any work unless a Call Order signed by the COTR has been received and until after all the work described in the Call Order has been completed to the satisfaction of the COTR. Invoices for vandalism/abuse repairs shall include a property damage number that will be assigned by the COTR.

2.2 PAYMENTS

All Payments are based upon City's acceptance of Contractor's performance of elevator and escalator maintenance services as evidenced by successful completion of the deliverable per specifications.

Except as otherwise provided in this Agreement, City shall make monthly payments within thirty (N30) calendar days of City's approval of Contractor's invoice. City shall have no obligation to pay unless Contractor has successfully completed and City has approved the services for which payment is due. City may deduct liquidated damages payments assessed pursuant to Section 4.1 of this Exhibit from each monthly payment due.

### **3. CPI ADJUSTMENT**

- 3.1 The Contractor's compensation rates shall be subject to adjustment on each anniversary of the performance period. The adjustment shall be calculated as follows:
- A. The base for computing the adjustment shall be the Consumer Price Index for Urban Wage Earners and Custodial Workers (with a base year of 1982-1984=100) for the San Francisco-Oakland-San Jose area, published by the United States Department of Labor Statistics ("Index"), which is published most immediately preceding the commencement of the applicable extension term ("Extension Index"), shall be compared with the Index published most immediately preceding the commencement date of the then expiring term ("Beginning Index"). If the Extension Index published has increased over or decreased under the Beginning Index, the monthly compensation rates for the extension term shall be set by multiplying the then expiring term's monthly compensation rate by a fraction, the numerator of which is the Extension Index and the denominator of which is the Beginning Index. Upon adjustment of the monthly compensation rates, the parties shall immediately execute a written amendment to the Agreement setting forth the new monthly compensation rates, and attach the same as a revised exhibit to the Agreement.
  - B. 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 in order to obtain substantially the same result as would be obtained if the Index had not been discontinued or revised.
  - C. The preceding provisions of this Section notwithstanding, the adjustment of any monthly compensation rate for any extension term shall not exceed 7% of the previous term's monthly compensation rate.
  - D. For the purpose of illustration only, if a Beginning Index is 115 and the Extension Index is 124, the monthly compensation rate to be paid during the extension term shall be \$ X (the then expiring term's monthly compensation rate) multiplied by 124/115.
- 3.2 Notwithstanding the above, for Option Year Three which commenced July 1, 2010, the compensation rates shall not be subject to CPI adjustment, and shall instead: (1) remain the same as for Option Year Two for the period July 1, 2010 through December 14, 2010, and (2) be decreased to the amounts specified in the rates charts in Sections 1.2 and 1.3 of this Second Revised Exhibit C for the period January 1, 2011 through June 30, 2011.

### **4. LIQUIDATED DAMAGES**

**4.1 THE PARTIES HERETO AGREE THAT IT WOULD BE IMPRACTICAL AND EXTREMELY DIFFICULT TO DETERMINE THE ACTUAL DAMAGE TO THE CITY IF CONTRACTOR WERE TO TERMINATE THIS AGREEMENT PRIOR TO EXPIRATION OR OTHERWISE BREACH. THE PARTIES MUTUALLY AGREE THAT LIQUIDATED DAMAGES SET FORTH IN THIS SECTION ARE ACCEPTABLE TO EACH PARTY AND ARE A REASONABLE ESTIMATE OF CITY'S LOSS IF CONTRACTOR FAILS TO COMPLETE SERVICES IN ACCORDANCE WITH THE SCHEDULE OF PERFORMANCE OUTLINED IN SECOND REVISED EXHIBIT B. Contractor hereby agrees that City may deduct from compensation amounts designated below from the monthly payment as liquidated damages for each incident of work not completed and/or non-response to unsatisfactory performance.**

- a. Contractor agrees to pay to City the sum of One Hundred dollars (\$100) per day if in any one (1) day (Monday through Friday), Contractor fails to maintain each elevator or escalator in service twenty (20) hours per day (excluding authorized scheduled down time). Liquidated damage shall not apply where Contractor has given notice to the City within thirty-six (36) hours that the elevator or escalator cannot be returned to service such that it is operational twenty hours per day due to the nature of the repairs. The thirty-six (36) hour notice period shall commence upon the conclusion of the service technician's visit to the site for the purpose of examination and diagnosis of the operational problem. The technician shall use reasonable efforts and perform due diligence to make a prompt assessment of the nature and extent of the damage or malfunction of said elevator or escalator.
- b. Contractor agrees to pay the City the sum of Five Hundred dollars (\$500) per week if in any one week (Sunday through Saturday), Contractor fails to respond to three (3) or more service calls in a timely manner.
- c. Contractor agrees to pay the City the sum of Five Hundred (\$500) dollars per day if any piece of elevator or escalator equipment remains down in excess of seven (7) consecutive calendar days for a covered/identified repair.

**BY PLACING THEIR INITIALS BELOW, CITY AND CONTRACTOR ACKNOWLEDGE THAT THE AMOUNTS SET FORTH BELOW HAVE BEEN AGREED UPON AS THE PARTIES' REASONABLE ESTIMATE OF CITY'S DAMAGES.**

**"CITY"**

**"CONTRACTOR"**

By: \_\_\_\_\_

By: \_\_\_\_\_