

**AGREEMENT FOR CITYWIDE ELEVATOR
MAINTENANCE AND REPAIRS
BETWEEN THE CITY OF SAN JOSÉ
AND
SCHINDLER ELEVATOR CORPORATION**

This Agreement is entered into as of July 1, 2009 between the City of San José, a municipal corporation ("City"), and Schindler Elevator, of San Leandro, a California Corporation ("Contractor").

RECITALS

1. City has issued a Request for Proposal ("RFP") for Citywide Elevator Maintenance and Repair;
2. 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 - Scope of Services
 - Exhibit A-1 Schedule of Performance
- Exhibit B - Compensation
- Exhibit C - Insurance Requirements
- Exhibit D - Wage Requirements
 - Exhibit D-1 Labor Compliance Addendum
 - Exhibit D-2 Prevailing Wage Work Classification

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.

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.

2 SCOPE OF SERVICES

Contractor shall perform those services specified in detail in the attached Exhibit A, entitled "Scope of Services".

3 TERM OF AGREEMENT

3.1 Initial Term

The term of this Agreement is from July 1, 2009 to June 30, 2010, inclusive, subject to the provisions of subsection 3.2 and Section 8.

3.2 Options

City has the right to extend the term of this Agreement for four (4) 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 B. 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.

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.

4 SCHEDULE OF PERFORMANCE

Contractor's services must be completed according to the schedule set out in the attached Exhibit A-1, entitled "Schedule of Performance." Time is of the essence in this Agreement.

5 COMPENSATION

City shall pay Contractor an amount not to exceed \$185,500.00 for Contractor's services and reimbursable expenses, if any, for the initial term of this Agreement. The terms, rate and schedule of payment are set forth in the attached Exhibit B, entitled "Compensation."

6 TAXES AND CHARGES

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

7 WAGE 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), which sets forth Contractor's obligations under the Policy.

8 TERMINATION

8.1 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.

8.2 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.

8.3 Termination Authority

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

8.4 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.

9 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.

10 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.

11 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.

12 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.

13 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.

14 CONFLICT OF INTEREST

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

15 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.

16 GIFTS

16.1 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.

16.2 No Offer

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

16.3 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 8 of this Agreement.

17 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.

18 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.

19 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.

20 CONTRACTOR'S BOOKS AND RECORDS

20.1 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.

20.2 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.

20.3 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.

20.4 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.

21 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.

22 SUBCONTRACTORS

Contractor may not use subcontractors to perform any services authorized under this Agreement.

22.1 Authorized Subcontractors

Notwithstanding Section 21 (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.

22.2 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.

23 GOVERNING LAW

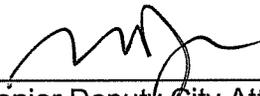
This Agreement must be construed -- and its performance enforced--under California law.

26.4 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



Senior Deputy City Attorney

By _____
Name: _____
Title: _____
Date: _____

Schindler Elevator,
a California Corporation


By _____
Name: _____
Title: **DENNIS DEVOS
DISTRICT MANAGER
SCHINDLER ELEVATOR CORPORATION**

EXHIBIT A SCOPE OF SERVICES

Contractor shall perform the following services:

1. SPECIFICATIONS AND REQUIREMENTS:

1.1 Description of Scope of Work.

Work to be performed by CONTRACTOR under this AGREEMENT shall consist of furnishing all labor, materials, tools and equipment for the complete maintenance and maintenance repairs of all CITY elevators and escalators described in Exhibit A-1, and as required for the continuous and efficient operation of elevators and escalators in accordance within the terms of this Scope of Work.

1.2 Scope of Work.

1.2.1 Scheduled Maintenance

CONTRACTOR shall systematically maintain elevators and escalators listed in Exhibit A-1 in accordance with the minimum designated frequencies.

1.2.2 For the purpose of this Agreement the following are Routine Service definitions.

1.2.2.1 Semi-monthly shall mean twice per month (once every 14 days).

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

1.2.3 The maintenance shall include.

1.2.3.1 Cleaning

Complete and continued cleaning of all parts of elevator equipment and all areas in which the equipment is operating such as; the machine room, hoist way pits, cars, separator beams, guide rails, and drip pans. Cleaning of escalators shall include annual removal and cleaning of steps, chains, and related parts.

1.2.3.2 Adjustments

All components such as brakes, cables, drive equipment, safety devices, and doors shall be adjusted within the manufacturer's recommended specification limits. All fluids shall be maintained at the proper levels.

1.2.3.3 Lubrication

All moving parts shall be lubricated with the appropriate quantities of manufacturer's recommended lubricant, and per the manufacturer's recommended frequency.

1.2.4 Additional Maintenance

Any additional maintenance not specifically mentioned in this Scope of Work, but required for proper functioning of elevators and escalators shall be performed.

1.3 General

When components are worn beyond a safe level of dependable service as determined by the CONTRACTOR and per the approval of the City project manager, CONTRACTOR shall repair or replace the defective components listed below.

1.3.1 All components replace by CONTRACTOR shall be inspected by the CITY prior to being removed from the work site.

1.4 Electric Elevators (Traction, Drum, Passenger, Service/Freight)

1.4.1 Machine drive sheave or drum drive, sheave or drum shaft bearings, brake pulley, brake coil, brake contact, linings and component parts, drum buffers, and stop motion switches.

1.4.2 Motor and motor generator, motor windings, rotating element, commutator, brushes, brush holder and bearings.

1.4.3 Controller, selector, and dispatching equipment, all relays, solid state components, resistors, condensers, transformers, contact, leads dashpots, timing devices, computer devices, steel selector tape and mechanical and electrical drive equipment.

1.4.4 Governor, governor sheave and shaft assembly, bearings, contacts, and governor laws.

1.4.5 Deflector, 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.

1.4.6 Hoist way door interlocks, hoist way door hangers, bottom door guides and auxiliary door closing devices.

1.4.7 Automatic power operated door operator, car door hanger, car door contact, door protective device, load weighing equipment, car frame, car safety mechanism, platform, wood platform flooring, elevator car, elevator car guide shoes, gibs or rollers, signal and operating fixtures, including lights, buzzers and gongs in all signal and operating fixtures.

1.4.8 All wire ropes to equalize the tension on all hoisting ropes.

1.4.9 Conductor cables and hoist way and machine room elevator wiring.

1.4.10 Re-shackle cables, hoist way and machine room elevator wiring

1.4.11 Shorten re-shackle hoist or compensating cables.

1.4.12 For freight elevators with vertical lifting or collapsible car gates and/or bi-parting, vertical lifting doors or hoist way gates;

1.4.12.1 Contact, pulleys, cables and locks.

1.4.12.2 Interlocks and retiring cams, door astragals and door guides.

1.5 Hydraulic Elevators

1.5.1 Pumping plant, valves, piping, fittings, cylinder, packing, plunger tank, heaters, mufflers, remote pipe, if exposed.

1.5.2 Materials covered by section 1.4, items 1.4.1, 1.4.2, 1.4.3 and 1.4.4.

1.6 Escalators

- 1.6.1 Chains, rollers and tracks.
- 1.6.2 Step risers and treads.
- 1.6.3 Comb teeth.
- 1.6.4 Handrails.
- 1.6.5 Controller.
- 1.6.6 Machine.

1.7 Additional Services

Additional services will include services which are supplemental to those listed above in sections 1.2, 1.3, 1.4, and 1.5.

2. EXCLUSIONS FROM SCHEDULED MAINTENANCE SERVICES

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

- 2.1 Elevator car enclosures, host way enclosures, host way door panels, frames and sills, and fluorescent lighting.
- 2.2 Hydraulic elevator buried cylinders and piping.
- 2.3 Escalator balus-trading, panels and enclosures.
- 2.4 Damage caused by acts of God or obvious abuse such as "Vandalism".
- 2.5 Obsolete part/component which are no longer available. CONTRACTOR shall make every reasonable effort to repair or replace the obsolete part/component.

Upon written notification from CONTRACTOR, CITY shall affect repairs for defective equipment with another contractor or with Contractor as an additional service under section 1.2.4. CONTRACTOR shall not be held responsible for any subsequent damage by the excluded equipment to equipment covered under this AGREEMENT until repairs have been completed.

3. PERFORMANCE OF CONTRACTOR

3.1 General

3.1.1 All work shall be performed in a timely, neat, and orderly manner by skilled and certified/competent elevator/escalator workers. CITY may refuse to accept work or workers who do not meet these standards. CONTRACTOR shall be responsible for any damage caused by its operations and shall repair or replace as direct by the CITY, said damage within a reasonable time.

3.2 Down Time

3.2.1 If an elevator or escalator is inoperative for more than fifteen (15) minutes, CONTRACTOR shall post at each entrance a neat and clearly legible sign indicating that the equipment is inoperative with an "estimated time" that the elevator will be returned to service.

All scheduled down time shall be presented to the CITY for approval a minimum of forty-eight (48) hours prior to shutdown.

3.2.2 Unscheduled down time shall be minimized. Contractor shall make every effort to bring elevators on-line as quickly as possible. The CITY estimates that the most severe elevator/escalator malfunction will be three (3) days of down time. Outages for routine failures shall be rectified on the same business day as reported by the CITY.

3.2.3 Immediately upon returning an elevator to service, the technician shall contact the appropriate CITY personnel (i.e. project manager) to inform them that the unit is back in service.

3.3 Callbacks

3.3.1 CONTRACTOR shall provide prompt service in the event of improper functioning of elevators or escalators twenty-four (24) hours per day, seven (7) days per week. This service shall be performed at "NO CHARGE" to the CITY.

3.3.2 In the event of an emergency call where actual or imminent physical or psychological damage to the user of the elevator or escalator, CONTRACTOR shall respond within twenty (20) minutes of placement of the call by the CITY.

3.3.4 In the event of non-emergency calls, CONTRACTOR shall provide service within one and one half (1 ½) hours of placement of the call by the CITY. Upon approval by the Director, additional time may be allowed.

3.3.5 Call backs for which the elevator or escalator is running upon arrival of the CONTRACTOR, and for which the CONTRACTOR is unable to determine a cause of failure shall be at no charge to the CITY.

3.4 Hours of Work

3.4.1 CITY shall not prohibit CONTRACTOR from performing work herein during a normal workday. If CONTRACTOR elects to work overtime hours, no additional compensation will be paid by CITY. For the purpose of this provision a "normal work day" is defined as Monday through Friday, 8:00am to 5:00pm

4. RECORDS

4.1 General

4.1.1 CONTRACTOR shall submit for approval by CITY a proposed work schedule and log within ten (10) days after award of the AGREEMENT.

4.1.2 CONTRACTOR shall provide a service schedule to each department on the first day of each month for that month. CITY shall approve the schedule within forty-eight (48) hours. All work scheduled during the month shall be performed during the times scheduled and not at call back times.

4.2 Schedule

The work schedule shall be designed for each type of equipment to be serviced, such as gearless elevators, geared elevators, hydraulic elevators and escalators and shall conform to the manufacturer's recommended practice for the specific equipment concerned. The schedule shall show the type and frequency of service and lubrication proposed by the CONTRACTOR for the duration of the AGREEMENT.

4.2.1 All inspections, lubrication, adjustments, tests, cleaning, routine repairs and other preventive maintenance activities shall be performed in accordance with the schedule.

4.2.2 After approval of the schedule by the CITY, CONTRACTOR shall keep the work schedule on display in each equipment room and perform regular maintenance service in accordance therewith. The posted schedule shall be of the chart type which shall be initialed by the CONTRACTOR when each scheduled inspection is performed.

4.3 Log

4.3.1 CONTRACTOR shall also maintain and submit to the CITY complete and accurate monthly logs of all work performed in addition to routine inspection at each location. The logs shall include emergency callback service describing the nature of all complaints and resolutions (See Exhibit E for Log Sheet to be used). CONTRACTOR shall on each call (scheduled or emergency, and for each location designated by the department), sign-in including date, time-in, time-out, and the ID numbers of the equipment serviced. This requirement shall be strictly enforced unless CONTRACTOR receives written exemption from the Director.

4.3.2 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.

4.4 Wiring and Construction Drawings

4.4.1 All changes in circuitry made by CONTRACTOR shall be properly recorded on a "Wiring and Construction drawing" supplied by the CITY, including date of change and the name of person making changes.

5. STOCK OF MATERIALS

5.1 On-Site Stock

5.1.1 CONTRACTOR shall maintain in each CITY approved machine room an adequate supply of contacts, switch parts, coils, conductors, springs, holders, resistors, relays, lamps, condensers, tubes, transformers, car and hall buttons, fuses, and other parts which are required for prompt replacement, together with an adequate supply of lubricants and wiping rags.

5.2 Off-Site Stock

5.2.1 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.

- 5.2.1.1 One (1) set of motor brushes and holders for each type of motor and generator.
- 5.2.1.2 One (1) door operator motor of each elevator type used.
- 5.2.1.3 Hanger sheaves for car and host way doors.
- 5.2.1.4 Two (2) complete door interlocks.
- 5.2.1.5 One (1) set of generator bearings for each type of generator.
- 5.2.1.6 One (1) set of brake linings for each type of elevator brake.
- 5.2.1.7 Parts for door protective devices.
- 5.2.1.8 All other parts as needed to assure prompt replacement in the event of the shutdown of any elevator or escalator.

5.2.2 CITY reserves the right to inspect CONTRACTOR's inventory if CITY deems such inspection is necessary.

6. ELEVATOR AND ESCALATOR PERFORMANCE

6.1 Testing

6.1.1 Within thirty (30) day intervals CONTRACTOR shall test for the proper operation of all safety features of elevators and escalators listed in Attachment B, including Fire Department service and other special controls.

6.1.2 Annually CONTRACTOR shall perform the following:

6.1.2.1 Examine all safety devices and governors.

6.1.2.2 Electrically test the car balance.

6.1.2.3 Test elevator speed.

6.1.3 Perform a load test of the safety mechanisms, overhead speed governors and counter weight buffers.

6.1.3.1 The testing of safeties on all traction elevators shall be in accordance with Rule 1001-4A of the American National Standard Safety Code (ANSI, A17-1-2971).

6.2 Basic Performance Requirements

Electric elevators shall be adjusted to meet the following basic performance standards and CONTRACTOR shall maintain these standards throughout the performance period of the AGREEMENT.

6.2.1 Elevators with generator field control floor to floor time for 13' 6" floors or less.

6.2.1.1 Gearless Machine: 6.0 seconds maximum

6.2.1.2 Geared Machine: 7.0 seconds maximum

6.2.2 Resistance AC machines with leveling; 8.0 seconds

6.2.3 Cycle time measured from the time a car leaves a typical floor, travels one floor (up or down), and the doors are 75% open, shall be a maximum of:

6.2.3.1 General Field Control.

6.2.3.1.1 Gearless machines, 3' 6" center opening doors: 9.0 seconds.

6.2.3.1.2 Gearless machines, 4' 0" center opening doors: 9.4 seconds.

6.2.3.1.3 Geared machines, 3' 6" center opening doors: 10.4 seconds.

6.2.3.1.4 Geared machines, 4' 0" center opening doors: 10.4 seconds.

6.2.3.2 For 2 speed doors add 0.5 (1/2 second).

6.2.3.3 Resistance control 2-speed or main motor leveling add 1.0 second to geared generator field control times above.

6.3 Quality Standards

The Contractor, and not the City, is responsible for management and quality control to meet the terms of the AGREEMENT. The role of the CITY is quality assurance to ensure contract standards are achieved. The following are the performance objectives of this AGREEMENT.

6.3.1 Maintenance Performance Objective.

6.3.1.1 The CONTRACTOR will maintain elevators and escalators so that in any given week, 95% of all elevators are operational at all times.

6.3.2 Service Call Repair Performance Objective:

6.3.2.1 The CONTRACTOR shall respond to 95% of all calls for repairs in a timely manner, as set forth in section 3.3.

6.3.3 The CONTRACTOR shall maintain and make available to the CITY within 24 hours or request, the following information:

6.3.3.1 Date and time of service call.

6.3.3.2 Time of arrival on site.

6.3.3.3 Corrective action taken.

6.3.3.4 Date and time unit is returned to service.

6.3.3.5 Any future action required to insure continued reliability of unit.

6.3.4 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 Contractor shall be obligated to pay such charges and City shall have the right to deduct such charges from amounts otherwise owing to Contractor.

RD:BD
5/28/09

**EXHIBIT A-1
SCHEDULE OF PERFORMANCE**

CITY ID	BUILDING LOCATION	DAYS & HOURS IN USE	EQUIPMENT TYPE & USE	MAKE	ELEV. NO.	FREQUENCY OF ROUTINE SERVICE	FLOORS SERVICED	MONTHLY COST
1	City Hall 801 N. 1st St.	Mon. - Friday 8:00am - 5:00pm	Passenger-Electric Overhead Traction	Millar 2000	32131	Semi-Monthly	4	\$344
2	City Hall 801 N. 1st St.	Mon. - Friday 8:00am - 5:00pm	Passenger-Electric Overhead Traction	Millar 2000	32132	Semi-Monthly	4	\$344
3	City Hall 801 N. 1st St.	Mon. - Friday 8:00am - 5:00pm	Passenger-Freight Hydroelectric Plunger	Rotary	32133	Monthly	4	\$242
4	City Hall Annex 801 N. 1st St.	Mon. - Friday 8:00am - 5:00pm	Passenger-Electric Overhead Traction	U.S. Elevator	61711	Semi-Monthly	5	\$344
5	City Hall Annex 801 N. 1st St.	Mon. - Friday 8:00am - 5:00pm	Passenger-Electric Overhead Traction	U.S. Elevator	61712	Semi-Monthly	5	\$344
6	Health Building 151 W. Mission St.	Mon. - Friday 8:00am - 5:00pm	Freight-Hydroelectric Plunger (Sidewalk)	Otis	39858	Monthly	2	\$236
7	Health Building 151 W. Mission St.	Mon. - Friday 8:00am - 5:00pm	Passenger-Electric Basement Traction	Otis	39859	Monthly	3	\$354
8	Police Administration 201 W. Mission St.	24 Hours/7 Days Wk.	Passenger-Electric Overhead Traction	Haughton	49271	Semi-Monthly	3	\$346
9	Police Administration 201 W. Mission St.	24 Hours/7 Days Wk.	Passenger-Electric Overhead Traction	Haughton	49272	Semi-Monthly	3	\$346
13	Off-Street Parking Garage, 45 N. Market	Mon. - Friday 6:30am - 9:30pm	Passenger-Electric Traction-1st Floor	Otis	42805	Semi-Monthly	5	\$357
14	Off-Street Parking Garage, 45 N. Market	Mon. - Friday 6:30am - 9:30pm	Passenger-Electric Traction-1st Floor	Otis	42806	Semi-Monthly	5	\$357

DRAFT--Contact the Office of the City Clerk at (408) 535-1260 or CityClerk@sanjoseca.gov for final document.

RD:BD
5/28/09

CITY ID	BUILDING LOCATION	DAYS & HOURS IN USE	EQUIPMENT TYPE & USE	MAKE	ELEV. NO.	FREQUENCY OF ROUTINE SERVICE	FLOORS SERVICED	MONTHLY COST
15	Old Library Bldg. 170 W. San Carlos	Mon. - Friday 8:00am - 5:00pm	Passenger-Electric Basement Traction	Otis	48875	Semi-Monthly	6	\$364
16	Old Library Bldg. 170 W. San Carlos	Mon. - Friday 8:00am - 5:00pm	Passenger-Electric Basement Traction	Otis	48876	Semi-Monthly	6	\$364
17	Old Library Bldg. 170 W. San Carlos	Mon. - Friday 8:00am - 5:00pm	Freight-Electric Basement Traction	Otis	48877	Semi-Monthly	6	\$364
20	Third & St. John Garage	24 Hours/7 Days Wk.	Passenger-Electric Overhead Traction	Otis	55742	Semi-Monthly	5	\$357
21	Third & St. John Garage	24 Hours/7 Days Wk.	Passenger-Electric Overhead Traction	Otis	55743	Semi-Monthly	5	\$357
22	Third & St. John Garage	24 Hours/7 Days Wk.	Passenger-Electric Overhead Traction	Otis	55744	Semi-Monthly	5	\$357
25	Museum of Art 110 S. Market St.	Tues. - Saturday 10:00am - 4:30pm Sunday 12:00am - 4:00pm	Passenger-Hydro Electric Plunger	Atlas	61607	Monthly	5	\$229
26	Old Library Bldg. 170 W. San Carlos	Mon. - Friday 8:00am - 5:00pm	Electric Overhead Chain Drive	Otis	48871	Monthly	1	\$520
27	Old Library Bldg. 170 W. San Carlos	Mon. - Friday 8:00am - 5:00pm	Electric Overhead Chain Drive	Otis	48872	Monthly	1	\$520
28	Old Library Bldg. 170 W. San Carlos	Mon. - Friday 8:00am - 5:00pm	Electric Overhead Chain Drive	Otis	48873	Monthly	1	\$520
29	Old Library Bldg. 170 W. San Carlos	Mon. - Friday 8:00am - 5:00pm	Electric Overhead Chain Drive	Otis	48874	Monthly	1	\$520
33	Police Administration 201 W. Mission St.	24 Hours/7 Days Wk.	Passenger-Hydro- Electric Plunger	U.S. Elevator	66413	Monthly	4	\$240
35	Block 6 Garage 280 S. Second St.	24 Hours/7 Days Wk.	Passenger Hydraulic	Home	71929	Monthly	5	\$246

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5/28/09

CITY NO.	BUILDING LOCATION	DAYS & HOURS IN USE	EQUIPMENT TYPE & USE	MAKE	ELEV. NO.	FREQUENCY OF ROUTINE SERVICE	FLOORS SERVICED	COST
37	Maybury Service Yard 1404 Maybury Rd.	Mon. - Fri. 8:00am - 5:00pm	Passenger-Hydro Electric Plunger	Cal Western	74458	Monthly	2	\$236
50	Police Communicatons Bldg. 855 N. San Pedro St.	24 Hours/7 Days Wk.	Passenger Electric Overhead Traction	Dover	86428	Semi-Monthly	5	\$350
51	Police Communicatons Bldg. 855 N. San Pedro St.	24 Hours/7 Days Wk.	Passenger Electric Overhead Traction	Dover	86429	Semi-Monthly	5	\$350
52	Police Communicatons Bldg. 855 N. San Pedro St.	24 Hours/7 Days Wk.	Passenger Electric Overhead Traction	Dover	86426	Semi-Monthly	4	\$350
53	Police Communicatons Bldg. 855 N. San Pedro St.	24 Hours/7 Days Wk.	Passenger Electric Overhead Traction	Dover	86427	Semi-Monthly	4	\$350
67	Museum of Art 110 S. Market Street	Tuesday - Saturday 10:00 a.m. - 4:30 p.m. Sunday Noon - 4:00 p.m.	Passenger-Hydro Electric Plunger	Dover	97150	Monthly	3	\$229
68	Museum of Art 110 S. Market Street	Tuesday - Saturday 10:00 a.m. - 4:30 p.m. Sunday Noon - 4:00 p.m.	Freight - Hydro Electric Plunger	Dover	97151	Monthly	3	\$282
69	Almaden Winery 5730 Chambertin Dr.	Mon. - Friday 8:00am - 5:00pm	Passenger-Hydro Electric Plunger	Otis	65694	Monthly	2	\$236

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RD:BD
5/28/09

CITY NO.	BUILDING LOCATION	DAYS & HOURS IN USE	EQUIPMENT TYPE & USE	MAKE	ELEV. NO.	FREQUENCY OF ROUTINE SERVICE	FLOORS SERVICED	COST
70	Central Service Yard 1661 Senter Rd.	24 Hours/7 Days Wk.	Electric-Overhead Traction	Esco	25319	Monthly	3	\$354
71	Rose Garden Library 1580 Naglee Ave.	Mon. 2:00pm - 7:00pm Tues./Weds. 11:00am - 8:00pm Thurs./Fri./Sat. 10:00am - 6:00pm Sun. 1:00pm-5:00pm	Passenger-Freight Hydro-Electric	Schindler 3301 Hydraulic	138043	Monthly	2	\$236
72	Almaden Community Center 6445 Camden Ave.	Mon. - Friday 8:00am - 5:00pm	Passenger Hydro-Electric	Motion Control	138239	Monthly	2	\$236
73	Cambrian Library 1180 Hillisdale Ave.	Tues/Weds. 11:00am - 8:00pm Thurs/Fri/Sat 10:00am - 6:00pm	Passenger Hydro-Electric	Thyssen-Krupp	138219	Monthly	2	\$236
74	West San Jose Community Ctr.	Mon/Tues/Thurs- 9:00am - 5:00pm, Wed 9:00am-7:00pm, Fri 9:00am-8:30pm	Passenger Hydro-Electric	Otis	138270	Monthly	2	\$236
75	Mexican Heritage Pl. 1700 Alum Rock Ave.	Mon.-Sun. 8:00am -68:00pm	Passenger Hydro-Electric	Thyssen-Krupp	115778	Monthly	2	\$234
76	Mexican Heritage Pl. 1700 Alum Rock Ave.	Mon.-Sun. 8:00am -68:00pm	Passenger Hydro-Electric	Thyssen-Krupp	115777	Monthly	2	\$234
77	Mexican Heritage Pl. 1700 Alum Rock Ave.	Mon.-Sun. 8:00am -68:00pm	Passenger Hydro-Electric	Thyssen-Krupp	115776	Monthly	2	\$234

DRAFT--Contact the Office of the City Clerk at (408) 535-1260 or CityClerk@sanjoseca.gov for final document.

EXHIBIT B COMPENSATION

1. Compensation

All Payments are based upon City's acceptance of Contractor's performance of the phase as evidenced by successful completion of the Deliverable for that Phase. City shall have no obligation to pay unless Contractor has successfully completed and City has approved the Project Phase for which payment is due.

The maximum amount of compensation to be paid to Contractor, including both payment for professional services and reimbursable expenses, for the initial year of scheduled maintenance services shall not exceed One Hundred Fifty -four Thousand Four Hundred Sixty Dollars (\$155,460) plus an additional amount of \$30040 available for Additional Services for a total maximum compensation not to exceed One Hundred Eighty Five Thousand Dollars (\$185,500.00). 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.

1.1 Rates

1. Citywide Facilities Elevator Maintenance				Monthly Charge
				\$12,955.00
2. Additional Services; Hourly Rates for Repair				
Job Classification	Hourly Rate Straight Time	Hourly Rate Overtime	Hourly Rate Wknd/Hol.	
Foreman/Supervisor	\$200.00	\$340.00	\$400.00	
Elevator Mechanic	\$200.00	\$340.00	\$400.00	
3. Percentage of Markup on Cost for Material, Parts & Equipment.				
Material & Parts:				20%
Equipment:				20%

1.2 Additional Services

Supplemental services provided by Contractor will be compensated at the hourly rates described in the table in section 1.1 above. The total amount of compensation for additional services shall not exceed \$30,000 annually. All additional services are to be at the written direction of the City's project manager.

2. 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. Contractor may only bill once per month for maintenance service and twice per month for repair work. All repair work must be identified on the invoice with the work order number, date of repair, and project manager's approval.

3. Payment to Contractor

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. If City makes any payments or incurs any costs, such as additional costs resulting from failure to pass state inspection as described in Section 6.3.4 above, 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.

3.2 If the CITY, through its Director of General Services requests overtime repairs, CITY shall in addition to the monthly compensation for maintenance paid to CONTRACTOR hereunder, pay to CONTRACTOR the difference between the straight time and overtime hourly labor rates paid to the specific job classification of workers who performed such overtime work, and in no event shall overtime work be requested by the CITY requiring payment of more than \$1,000 in any one month. For the purposes of this provision, "overtime repairs" are defined as

those repairs requested by the Director outside the hours from Monday through Friday, 8:00am to 5:00pm.

4. CPI Adjustment

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 up to the Consumer Price Index for Urban Wage Earners and Clerical Workers - CPI-U, (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.

The adjustment date shall be the anniversary date of the agreement beginning on the operational year starting May 1, 2010. On the adjustment date, the maximum compensation amounts shall be adjusted to reflect the annual percentage increase in the Consumer Price Index for Urban Wage Earners and Clerical Workers - CPI-U for the San Francisco-Oakland-San Jose area, published by the United States Department of Labor, Bureau of Statistics ("Index") for the calendar year preceding the relevant adjustment date over the same Consumer Price Index for 2009.

At any adjustment date, if the CPI does not exist in the same format as recited in this paragraph or ceases to exist in its entirety, the City shall substitute any official index published by the Bureau of Labor Statistics, or successor or similar governmental agency, as may then be in existence and be most nearly equivalent thereto, applicable to the San Jose metropolitan area.

Notwithstanding the foregoing, the adjustment to the unit cost of any category of expense for an agreement year shall not exceed five (5) percent of the cost applicable to that expense in the immediately preceding fiscal year.

- 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 provision of this Section notwithstanding, the adjustment of any monthly compensation rate for any extension term shall not exceed 5% 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 \$ X (the then expiring term's monthly compensation rate) multiplied by 124/115.

5. LIQUIDATED DAMAGES

5.1 Performance Standard Breaches.

The following specified items shall be referred to as "Performance Standard Breaches".

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. IN ADDITION TO THE SERVICES PROVIDED, CITY EXPECTS TO RECEIVE OTHER BENEFIT FROM CONTRACTOR'S SERVICES. 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.

<p>In any one day (Monday through Friday), CONTRACTOR fails to maintain each elevator or escalator in service twenty hours per day (excluding authorized scheduled downtime). This liquidated damage shall not apply where contractor has given notice to the City within forty-eight (48) hours that the elevator or escalator cannot be returned to service such that it is operational not less than twenty hours per day due to the nature of the repair, the unavailability of parts, or any other reason beyond the control of the CONTRACTOR. The forty-eight (48) 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 and duly diligent efforts to make a prompt assessment of the nature and extent of the damage or malfunction of said elevator or escalator.</p>	<p>\$100 Per Day</p>
<p>In any one week (Sunday through Saturday), CONTRACTOR fails to respond to three (3) or more service calls in a timely manner, as set forth in Attachment A Scope of Work, Section 3.3.</p>	<p>\$500 per Week</p>

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
By: _____

CONTRACTOR
By:  _____

RD:BD
5/28/09

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 Contractor, its agents, representatives, employees or subcontractors.

A. Minimum Scope of Insurance

Coverage shall be at least as broad as:

1. The coverage described in Insurance Services Office Form Number GL 0002 (Ed. 1/96) covering Commercial General Liability together with Insurance Services Office Form Number GL 0404 covering Broad Form Comprehensive General Liability; or that described in Insurance Services Office Commercial General Liability coverage ("occurrence") Form Number CG 0001 Ed. 01/96; and
2. The coverage described in Insurance Services Office Form Number CA 0001 (Ed. 12/93) covering Automobile Liability, Code 1 "any auto", or Code 2 "owned autos" and Endorsement CA 0025. Coverage shall also include Code 8 "hired autos" and Code 9 "non-owned autos"; and
3. Workers' Compensation insurance as required by the California Labor Code and Employers Liability insurance; and

B. Minimum Limits of Insurance

Contractor shall maintain limits no less than:

1. Commercial General Liability: \$1,000,000 combined single limit per occurrence for bodily injury, personal injury and property damage. If Commercial Liability Insurance or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to this project/location or the general aggregate limit shall be twice the required occurrence limit; and
2. Automobile Liability: \$1,000,000 combined single limit per accident for bodily injury and property damage; and
3. Workers' Compensation and Employers Liability: Workers' Compensation limits as required by the California Labor Code and Employers Liability limits of \$1,000,000 per accident; and

C. Deductibles and Self-Insured Retentions

Any deductibles or self-insured retentions must be declared to, and approved by City's Risk Manager. At the option of City, either: the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects City, its officers, employees, agents and contractors; or 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.

D. Other Insurance Provisions

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

1. Commercial General Liability and Automobile Liability Coverage

a. Insured. The City of San Jose, its officers, employees, agents and contractors are to be covered as additional insured as respect to: Liability arising out of activities performed by or on behalf of, Contractor; products and completed operations of Contractor; premises owned, leased or used by Contractor; and automobiles owned, leased, hired or borrowed by Contractor. The coverage shall contain no special limitations on the scope of protection afforded to City, its officers, employees, agents and contractors.

b. Contribution Not Required. Contractor 's insurance coverage shall be primary insurance as respects City, its officers, employees, agents and contractors. Any insurance or self-insurance maintained by City, its officers, employees, agents or contractors shall be excess of Contractor 's insurance and shall not contribute with it.

c. Provisions Regarding the Insured's Duties After Accident or Loss. Any failure to comply with reporting provisions of the policies by Contractor shall not affect coverage provided CITY, its officers, employees, agents, or contractors.

d. Coverage. Coverage shall state that 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.

2. All Coverages

Each insurance policy required by this Agreement shall be endorsed to state that coverage shall not be suspended, voided, cancelled, or reduced in limits except after thirty (30) days' prior written notice has been given to CITY's Risk Manager.

E. Acceptability of Insurers

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

F. Verification of Coverage

Contractor shall furnish City with certificates of insurance and with original endorsements affecting coverage required by this Agreement. 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.

Proof of insurance shall be mailed to the following address or any subsequent address as may be directed in writing by the Risk Manager:

CITY OF SAN JOSE
Human Resources Department
Risk Management Division
200 E. Santa Clara Street, 2nd Flr/Wing
San Jose, CA 95113

Phone: (408) 535-7063
Fax: (408) 286-6492

G. Subcontractors

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

EXHIBIT D-1
LABOR COMPLIANCE ADDENDUM



LABOR COMPLIANCE ADDENDUM
SAN JOSÉ LIVING WAGE AND PREVAILING
WAGE POLICIES

AGREEMENT TITLE:	CITYWIDE ELEVATOR MAINTENANCE AND REPAIR
CONTRACTOR Name and Address:	Schindler Elevator Corporation 555 McCormick Street San Leandro, CA 94577

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 [4 hours a day or 20 hours a week]; 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 Department of Finance. Upon award the Department of General Services 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.

EXHIBIT D-1
LABOR COMPLIANCE ADDENDUM

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.**

**EXHIBIT D-1
LABOR COMPLIANCE ADDENDUM**

THIS PROVISION MEANS THAT CITY CAN WITHOLD 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:** 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 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.**
- 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.

City

Contractor

By _____
 Name: Mark Giovannetti
 Title: Purchasing Officer
 Date: _____

By 
 Name: DEVOS DEVOS
 Title: DISTRICT MANAGER
 Date: 6.16.09

**ATTACHMENT D-2
PREVAILING WAGE WORK CLASSIFICATION**



Department of Public Works
EQUALITY ASSURANCE

Work Classification Determination

The following classification(s) are applicable to this contract. The prevailing wage rates for this contract are contained in the General Prevailing Wage Determination issued by the Director of Industrial Relations. More information about the General Wage Determination is provided on the next page. If you have any questions regarding the classifications listed for this contract, please contact the Office of Equality Assurance and reference the RFP title shown at bottom of page.

Work Description

Classification(s)

Repair & Maintenance of
Elevators

Carpenter and Related Trades, Millwright [Pg. 34]

OEA Reference –City-Wide Elevator Maintenance RFP

**EXHIBIT D-2
PREVAILING WAGE WORK CLASSIFICATION AND FORMS**



Department of Public Works
EQUALITY ASSURANCE

PREVAILING WAGE REQUIREMENT ATTACHMENT

Instructions to Obtain Prevailing Wage Determination

A copy of the current General Prevailing Wage Determination made by the Director of Industrial Relations may be obtained from the Office of Equality Assurance at:

City of San Jose – Public Works
Equality Assurance
200 E. Santa Clara St., 5th Floor Tower
San Jose, CA 95113-1905
Phone: 408.535.8430 Fax: 408.292.6270

For Internet access to current wage rates and benefit information, you may contact the California Department of Industrial Relations web site at <http://www.dir.ca.gov/>. Click on **Statistics & Research**. Scroll down to Current Prevailing Wage Determinations and click on the corresponding **General Prevailing Wage Determinations Menu (Journeyman)**. Scroll down and follow the directions until you locate the trade applicable to your contract. Prevailing wages for City of San Jose contracts will be found under:

- Step One **Statewide**,
- Step Two (A) **Northern California**, or
- Step Four for **Santa Clara County**

NOTE: Effective Dates of Determination and of Rates within Determination

Contractors are advised that rates determined by the Department of Industrial Relations are subject to change during the term of this contract as described below.

Effective date of determination. All determinations issued by the Director of the Department of Industrial Relations will be effective ten (10) days after issuance. Determinations issued by the Director will show an issue date and will ordinarily show an expiration date. All determinations will remain in effect until their expiration date or until modified, corrected, rescinded or superseded by the Director. Contractors are advised to note the expiration date on the prevailing wage classification identified for this solicitation and the asterisk (*) as explained in the paragraph below.

Meaning of single and double asterisks. Prevailing wage determinations with a single asterisk (*) after the expiration date (which are in effect on the date of advertisement for bids) remain in effect for the life of the project. Prevailing Wage determinations with double asterisks (**) after the expiration date indicate that the basic hourly wage rate, overtime and holiday pay rates, and employer payment to be paid for work performed *after* this date have been predetermined. If work is to be extended past the rate expiration date, the new rate must be paid and should be incorporated in contracts entered into now. Contact the Division of Labor Statistics and Research for specific rates (415) 703-4774.

All determinations that do not have the double asterisks (**) after the expiration date remain in effect for the life of the contract.

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(BD2)(GS2) 5-28-09 (2) (2)

DRAFT--Contact the Office of the City Clerk at (408) 535-1260 or CityClerk@sanjoseca.gov for final document.