

**AGREEMENT FOR MINOR CONSTRUCTION SERVICES
BETWEEN
THE CITY OF CATHEDRAL CITY, CALIFORNIA
AND
OTIS ELEVATOR COMPANY**

This Agreement for Minor Construction Services ("**Agreement**") is entered into as of December, 2024 ("**Effective Date**") between the City of Cathedral City, a municipal corporation ("**City**") and OTIS Elevator Company ("**Contractor**") (collectively the "**Parties**"). In consideration of the mutual promises and covenants made by the parties and contained here and other consideration, the value and adequacy of which are hereby acknowledged, the parties agree as follows:

SECTION 1. SCOPE OF SERVICES

1.1 **Term.** Subject to the provisions of Section 8 [Termination] of this Agreement, the term of this Agreement is for 9 months commencing on the Effective Date ("**Term**").

1.2 **Contractor Services.** Subject to the terms and conditions of this Agreement, Contractor agrees to perform for City those services specified in the Scope of Services attached hereto and incorporated herein by reference as Exhibit "A" [Scope of Services] ("**Services**"). Contractor agrees to furnish, for the compensation provided for herein, all labor, materials, tools, equipment, services, and incidental and customary work necessary to fully and adequately perform and complete the Services. The Services shall be subject to inspection and approval by City. Contractor agrees to work closely with City staff in the performance of the Services and shall be available to City's staff and consultants at all reasonable times.

1.3 **Extra Work.** Contractor shall not be compensated for any work or services rendered in connection with its performance of this Agreement, which are in addition to or outside of the Services ("**Extra Work**"), except as expressly provided for herein. It shall be Contractor's responsibility to ensure that the scope and price of any Extra Work to be performed by Contractor is approved by City in writing in advance of Contractor's commencement of the Extra Work in accordance with Section 9.10 [Amendments] and Section 9.19 [Administration and Implementation]. City shall not be obligated to pay for or otherwise be liable for unauthorized Extra Work performed by Contractor.

1.4 **Schedule of Performance.** Contractor agrees to diligently perform and complete the Services in accordance with the schedule of performance attached hereto and incorporated herein by reference as Exhibit "B" [Schedule of Performance] ("**Schedule of Performance**"). Modifications to the Schedule of Performance must be

agreed upon in writing in advance by the City Manager pursuant to Section 9.19 [Administration and Implementation] and Contractor.

1.5 General Warranty. Contractor warrants all Services under this Agreement (which for purposes of this Section shall be deemed to include unauthorized Extra Work which has not been removed and any non-conforming materials incorporated into the Services) to be of good quality and free from any defective or faulty material and workmanship. All warranties and guarantees of subcontractors, suppliers and manufacturers with respect to any portion of the Services, whether express or implied, are deemed to be obtained by Contractor for the benefit of City, regardless of whether or not such warranties and guarantees have been transferred or assigned to City by separate agreement and Contractor agrees to enforce such warranties and guarantees, if necessary, on behalf of City.

1.6 Repair of Defects. Contractor agrees that for a period of one (1) year from and after final acceptance of the Services, or in any guarantee or warranty provided by any manufacturer or supplier of equipment or materials incorporated into the Services, whichever is later, Contractor shall within ten (10) days after being notified in writing by City of any defect in the Services or non-conformance of the Services, commence and prosecute with due diligence all work and services necessary to fulfill the terms of the warranty at its sole cost and expense. In addition, Contractor shall, at its sole cost and expense, repair and replace any portions of the work, facilities, fixtures, or materials damaged by its defective Services or which becomes damaged in the course of repairing or replacing defective Services. For any Services so corrected, Contractor's obligation hereunder to correct defective Services shall be reinstated for an additional one-year period, commencing with the date of acceptance of such corrected Services. Contractor shall perform such tests as City may require verifying that any corrective actions are adequate to remedy the defective condition. In the event the Contractor fails to perform its obligations under this Section to the reasonable satisfaction of City, then City shall have the right to correct and replace any defective, non-conforming, or damaged Services at Contractor's sole expense. Contractor shall be obligated to fully reimburse City for any expenses incurred hereunder upon demand.

1.7 Contractor's Representative. Contractor hereby designates the representative named in Exhibit "D" [Representatives], or his or her designee, to act as its representative for the performance of this Agreement ("**Contractor's Representative**"). Contractor's Representative shall have full authority to represent and act on behalf of the Contractor for all purposes under this Agreement. Contractor's Representative shall supervise and direct the Services, using his or her best skill and attention, and shall be responsible for all means, methods, techniques, sequences and procedures and for the satisfactory coordination of all portions of the Services under this Agreement.

1.8 Contract Documents. The following documents shall be referred to collectively as the "Contract Documents," each of which is incorporated into and made

part of this Agreement by reference:

- Approved and fully executed change orders (if any)
- Addenda (if any)
- This Agreement
- All exhibits to this Agreement
- Notice Inviting Bids
- Instructions to Bidders, and any documents referenced therein
- Bid Forms (including Contractor's Bid Schedule)
- Payment and Performance Bonds, if required

The Contract Documents are intended to be complementary, and a requirement in one document is as effective as if it appeared in all of the Contract Documents. In the event of a conflict between any of the Contract Documents, the documents shall be given effect in the order set forth above.

SECTION 2. COMPENSATION AND METHOD OF PAYMENT

2.1 Compensation. City shall pay to Contractor for non-disputed Services rendered the compensation set forth in Exhibit "C" [Compensation] attached hereto and incorporated herein by reference. Total compensation to Contractor for the Services shall not exceed the total price or "not to exceed" amount set forth in Exhibit "C," without the prior written approval of City in accordance with Section 9.10 [Amendments] and Section 9.19 [Administration and Implementation].

2.2 Payment of Compensation. Contractor shall submit periodic (monthly or quarterly as specified in Exhibit "C") invoices together with an itemized statement of Services provided. The statement shall describe the Services provided, the percent of work completed by item, together with such other reasonable detail and supporting documentation as may be required by the City Manager, or his/her designee. City will review the statement and pay, with the exception of any charges for work performed or expenses incurred by Contractor which are disputed by City, within 30 days of receiving such statement, all approved charges thereon. Payment by City shall release City from any further obligation for payment to Contractor, for Services performed or expenses incurred as of the date of the invoice. Payment to Contractor for work performed pursuant to this Agreement shall not be deemed to waive any defect in work performed by Contractor.

SECTION 3. RESPONSIBILITIES OF CONTRACTOR

3.1 Control and Payment of Subordinates; Independent Contractor. Contractor agrees that all Services shall be performed by Contractor or under its supervision. The personnel performing the Services under this Agreement on behalf of Contractor shall at all times be under the Contractor's exclusive direction and control.

Contractor will determine the means, methods and details of performing the Services subject to the requirements of this Agreement. Contractor is and shall at all times remain a wholly independent contractor and not an officer, employee or agent of City. Contractor shall have no authority to bind City in any manner, nor to incur any obligation, debt or liability of any kind on behalf of or against City, whether by contract or otherwise, unless such authority is expressly conferred under this Agreement or is otherwise expressly conferred in writing by City. Neither Contractor, nor any of Contractor's officers, employees or agents, shall obtain any rights to retirement, healthcare or any other benefits which may otherwise accrue to City's employees. Contractor expressly waives any claim Contractor may have to any such rights. Contractor shall make payments promptly, as due, to all persons supplying labor or materials for the Services. Contractor shall not permit any lien or claim to be filed or prosecuted against the City on any account of any labor or material furnished for the Services. If Contractor fails, neglects or refuses to make prompt payment of any claim for labor or services furnished to Contractor or a subcontractor by any person as such claim becomes due, City may pay such claim and charge the amount of the payment against funds due or to become due the Contractor. The payment of the claim in this manner shall not relieve Contractor or their surety from obligation with respect to any unpaid claims.

3.2 Standard of Care and Licenses. Contractor agrees that all Services shall be performed in a skillful and competent manner, consistent with the standards generally recognized as being employed by professionals in the same discipline in the State of California. Contractor represents and warrants that it, its employees and subcontractors shall have sufficient skill and experience to perform the Services and that it, its employees and subcontractors have all licenses, permits, qualifications and approvals of whatever nature that are legally required to perform the Services, including a City Business License, and that such licenses and approvals shall be maintained in good standing throughout the term of this Agreement.

3.3 Required Corrections. Contractor shall perform, at its own expense and without reimbursement from the City, any work necessary to correct errors or omissions that are caused by the Contractor's failure to comply with the standard of care provided for herein.

3.4 Law and Regulations. Contractor shall keep itself fully informed of and in compliance with all local, state and federal laws, rules and regulations in any manner affecting the performance of the Services, including all Cal/OSHA requirements, and shall give all notices required by law. Contractor shall be liable for all violations of such laws and regulations in connection with Services.

3.5 Safety. Contractor shall perform the Services, and maintain its work area, so as to avoid injury or damage to any person or property and shall otherwise exercise all necessary precautions for the safety of employees appropriate to the nature of the work and the conditions under which the work is to be performed.

3.6 Labor Code and Prevailing Wage Requirements.

3.6.1 Apprenticeable Crafts. To the extent applicable, Contractor shall comply with the provisions of Section 1777.5 of the Labor Code with respect to the employment of properly registered apprentices upon public works.

3.6.2 Hours of Work. Contractor shall comply with the legal days work and overtime requirements of Section 1813 of the Labor Code.

3.6.3 Payroll Records. In accordance with the requirements of Labor Code Section 1776, Contractor shall keep accurate payroll records which are either on forms provided by the Division of Labor Standards Enforcement or which contain the same information required by such forms. Contractor shall make all such records available for inspection at all reasonable hours.

3.6.4 Prevailing Wage Laws. Contractor represents and warrants that it is aware of the requirements of California Labor Code Section 1720, et seq., and 1770, et seq., as well as California Code of Regulations, Title 8, Section 1600, et seq., ("**Prevailing Wage Laws**"), which require the payment of prevailing wage rates and the performance of other requirements on "Public Works" and "Maintenance" projects. If the Services are being performed as part of an applicable "Public Works" or "Maintenance" project, as defined by the Prevailing Wage Laws, and if the total compensation is \$1,000 or more, Contractor agrees to fully comply with such Prevailing Wage Laws. City shall provide Contractor with a copy of the prevailing rates of per diem wages in effect at the commencement of this Agreement. Contractor shall make copies of the prevailing rates of per diem wages for each craft, classification or type of worker needed to execute the Services available to interested parties upon request, and shall post copies at the Contractor's principal place of business and any location where the Services are performed.

3.7 **Equal Opportunity Employment**. Contractor represents that it is an equal opportunity employer and it shall not discriminate against any subcontractor, employee or applicant, in any way, in the employment of persons to perform the Services in violation of any federal or state law prohibiting discrimination in employment, including based on the race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, age, sexual orientation, of any person, except as provided under California Government Code section 12940.

SECTION 4. INDEMNIFICATION

4.1 **Indemnity**. Except as to the sole negligence, active negligence, gross negligence or willful misconduct of City, Contractor expressly agrees to, and shall, indemnify, defend, release, and hold City, and its respective officials, officers, employees, agents, and contractors harmless from and against any Action, liability, loss, damage, entry, judgment, order, lien, and Costs and Expenses which arises out of,

or are in any way related to, any act or omission of Contractor, or its officers, directors, employees, agents, or contractors, connected with the performance or failure to perform under this Agreement, notwithstanding that City may have benefited therefrom, or any challenge to this Agreement. This Section shall apply to any acts or omissions, willful misconduct or negligent conduct, whether active or passive, on the part of Contractor's officers, directors, employees, agents and contractors, including but not limited to acts or omissions in any way related to, the release, treatment, use, generation, transportation, storage, or disposal in, on, under, to, or from the location at which work under this Agreement is performed of any Hazardous Substances by Contractor or its officers, directors, employees, agents, and subcontractors. The Parties expressly agree that any payment, or Costs and Expenses City incurs or makes to, or on behalf of, an injured employee under City's workers' compensation or other insurance, is included as a loss or Costs and Expenses for the purpose of this Section. City shall not be responsible for any acts, errors or omissions of any person or entity except City and its officers, agents, servants, employees or contractors. The Parties expressly agree that the obligations of Contractor under this Section shall survive the expiration or early termination of the Agreement.

4.2 **Action.** For purposes of this Agreement, "**Action**" shall mean any suit (whether legal, equitable, or declaratory in nature), proceeding or hearing (whether administrative or judicial), arbitration or mediation (whether voluntary, court-ordered, binding, or non-binding), or other alternative dispute resolution process, and the filing, recording, or service of any process, notice, claim, demand, lien, or other instrument which is a prerequisite or prelude to commencement of the Action.

4.3 **Costs and Expenses.** For purposes of this Agreement, "**Costs and Expenses**" shall mean all costs and expenses, to the extent reasonable in amount, actually and necessarily incurred by a Party in good faith in the investigation, prosecution or defense of an Action, including, but not limited to, court costs, filing, recording, and service fees, copying costs, exhibit production costs, special media rental costs, attorney's fees, consultant fees, fees for investigators, witness fees (both lay and expert), travel expenses, deposition and transcript costs, and any other costs or expenses, the award of which a court of competent jurisdiction may determine to be just and reasonable.

4.4 **Hazardous Substances.** For purposes of this Agreement, "Hazardous Substances" shall mean any and all of the following:

a. any substance, product, waste or other material of any nature whatsoever which is or becomes listed, regulated, or for which liability arises for misuse, pursuant to the Comprehensive Environmental Response Compensation and Liability Act ("CERCLA"), 42 U.S.C. §9601, *et seq.*; the Hazardous Materials Transportation Act, 49 U.S.C. §1801, *et seq.*; the Resource Conservation and Recovery Act ("RCRA"), 42 U.S.C. §6901, *et seq.*; the Toxic Substances Control Act, 15 U.S.C.S. §2601, *et seq.*; the Clean Water Act, 33 U.S.C. §1251, *et seq.*; the Insecticide,

Fungicide, Rodenticide Act, 7 U.S.C. §136, *et seq.*; the Superfund Amendments and Reauthorization Act, 42 U.S.C. §6901, *et seq.*; the Clean Air Act, 42 U.S.C. §7401, *et seq.*; the Safe Drinking Water Act, 42 U.S.C. §300f, *et seq.*; the Solid Waste Disposal Act, 42 U.S.C. §6901, *et seq.*; the Surface Mining Control and Reclamation Act, 30 U.S.C. §1201, *et seq.*; the Emergency Planning and Community Right to Know Act, 42 U.S.C. §11001, *et seq.*; the Occupational Safety and Health Act, 29 U.S.C. §§655 and 657; the Hazardous Waste Control Act, California Health and Safety Code (“H.&S.C.”) §25100, *et seq.*; the Hazardous Substance Account Act, H.&S.C. §25330, *et seq.*; the California Safe Drinking Water and Toxic Enforcement Act, H.&S.C. §25249.5, *et seq.*; the Underground Storage of Hazardous Substances, H.&S.C. §25280, *et seq.*; the Carpenter-Presley-Tanner Hazardous Substance Account Act, H.&S.C. §25300, *et seq.*; the Hazardous Waste Management Act, H.&S.C. §25170.1, *et seq.*; the Hazardous Materials Response Plans and Inventory, H.&S.C. §25001, *et seq.*; the Porter-Cologne Water Quality Control Act, Water Code §13000, *et seq.*, all as they may from time to time be amended; and

b. any substance, product, waste or other material of any nature whatsoever which is or becomes listed, regulated, or for which liability for misuse arises pursuant to any other federal, state or local statute, law, ordinance, resolution, code, rule, regulation, order or decree due to its hazardous, toxic or dangerous nature.

SECTION 5. RECORDS AND DOCUMENTS

5.1 Accounting Records.

5.1.1 Maintenance and Inspection. Contractor shall maintain complete and accurate records with respect to all expenses incurred under this Agreement. Any and all such documents or records shall be maintained in accordance with generally accepted accounting principles and shall be sufficiently complete and detailed so as to permit an accurate evaluation of the Services provided by Contractor pursuant to this Agreement. All such records shall be clearly identifiable.

5.1.2 Inspection and Copying. Contractor shall allow a representative of City during normal business hours to examine, audit, and make transcripts or copies of such records and any other documents created pursuant to this Agreement. Contractor shall allow inspection of all work, data, documents, proceedings, and activities related to the Agreement for a period of three (3) years from the date of final payment under this Agreement. At no cost to City, Contractor shall provide copies of such documents or records directly to the City for inspection, audit and copying when it is practical to do so; otherwise, unless an alternative is mutually agreed upon, such documents and records shall be made available at Contractor’s address indicated for receipt of notices in this Agreement.

5.2 **Ownership of Documents.** All original maps, models, designs, drawings, photographs, studies, surveys, reports, data, notes, computer files, files and other documents prepared, developed or discovered by Contractor in the course of providing

the Services shall become the sole property of City and may be used, reused or otherwise disposed of by the City without the permission of the Contractor. Upon completion, expiration or termination of this Agreement, Contractor shall turn over to City all such original maps, models, designs, drawings, photographs, studies, surveys, reports, data, notes, computer files, files and other documents.

SECTION 6. INSURANCE

6.1 Maintenance of Insurance. Prior to the beginning of and throughout the term of this Agreement, Contractor will maintain insurance in conformance with requirements established by City for the type of Services being performed. Contractor acknowledges that prior to the Effective Date of this Agreement, City provided to Contractor the applicable insurance requirements, a copy of which are attached hereto as Exhibit "F" [Insurance]. Contractor acknowledges that the insurance coverage and policy limits provided by City constitute the minimum amount of coverage required. Any insurance proceeds in excess of the limits and coverage required in this Agreement and which are applicable to a given loss, will be available to the City.

6.2 Subcontractors Insurance. Contractor agrees to ensure that subcontractors, and any other party involved in the performance of the Services by Contractor, provide the same minimum insurance coverage required of Contractor. Contractor agrees to monitor and review all such coverage and assumes all responsibility for ensuring that such coverage is provided in conformity with the requirements of this section. Contractor agrees that upon request, all agreements with subcontractors and others engaged in the project will be submitted to City for review.

6.3 Modification of Insurance Provisions. The City Manager may make reasonable amendments to the insurance requirements of this section, with the written concurrence of the Finance Director or Risk Manager, in accordance with Section 9.19 [Administration and Implementation] after considering the Scope of Services, potential liabilities, and the required level of insurance to adequately protect the City.

SECTION 7. BONDS

7.1 Performance and Payment Bonds. If required by law or specifically required by City as set forth in Exhibit "E" [Bonds Required], attached hereto and incorporated herein by reference, Contractor shall execute and provide to City concurrently with Contractor's execution of this Agreement, but in no event later than the Effective Date of this Agreement, a Performance Bond and/or a Payment Bond in the amount of the total, not-to-exceed compensation indicated in Exhibit C, and in a form provided or approved by the City.

7.2 Bond Provisions. Should, in City's sole opinion, any bond become insufficient or any surety be found to be unsatisfactory, Contractor shall renew or replace the affected bond within 10 days of receiving notice from City. In the event the surety or Contractor intends to reduce or cancel any required bond, at least thirty (30)

days prior written notice shall be given to the City, and Contractor shall post acceptable replacement bonds at least ten (10) days prior to expiration of the original bonds. No further payments shall be deemed due or will be made under this Agreement until any replacement bonds required by this section are accepted by the City. To the extent, if any, that the total compensation is increased in accordance with the Agreement, the Contractor shall, without further notice from City, cause the amount of the bonds to be increased accordingly and shall promptly deliver satisfactory evidence of such increase to the City. To the extent available, the bonds shall further provide that no change or alteration of the Agreement (including, without limitation, an increase in the total compensation, as referred to above), extensions of time, or modifications of the time, terms, or conditions of payment to the Contractor, will release the surety.

7.3 Surety Qualifications. Only bonds executed by an admitted surety insurer, as defined in Code of Civil Procedure Section 995.120, shall be accepted. The surety must be a California-admitted surety with a current A.M. Best's rating no less than A:VIII and satisfactory to the City. If a California-admitted surety insurer issuing bonds does not meet these requirements, the insurer will be considered qualified if it is in conformance with Section 995.660 of the California Code of Civil Procedure, and proof of such is provided to the City.

SECTION 8. TERMINATION.

8.1 Termination by City. City may, by written notice to Contractor, terminate with or without cause, and without any prior notice of default or right to cure by Contractor, the whole or any part of this Agreement at any time and by giving written notice to Contractor of such termination, and specifying the effective date thereof, at least five (5) days before the effective date of such termination. Upon termination, Contractor shall be compensated only for those non-disputed Services that have been adequately rendered to City, and Contractor shall be entitled to no further compensation.

8.2 Termination by Contractor. Contractor may, by written notice to City, terminate this Agreement based upon City's failure to timely cure a default under this Agreement as provided herein. At least forty-five (45) days prior to termination, Contractor shall provide City with a written notice specifying City's alleged default and providing City with a forty-five (45) day period to cure the default. Should City timely cure such default, the Agreement shall continue. Should City fail to timely or adequately cure such default, Contractor may terminate this Agreement by issuance of written notice to City.

SECTION 9. GENERAL PROVISIONS

9.1 Assignment or Transfer. Contractor shall not assign, hypothecate, or transfer, either directly or by operation of law, this Agreement or any interest herein without the prior written consent of the City. Any attempt to do so shall be null and void,

and any assignees, hypothecates or transferees shall acquire no right or interest by reason of such attempted assignment, hypothecation or transfer.

9.2 Loss and Damage. Contractor shall be responsible for all loss and damage which may arise out of the nature of the Services agreed to herein, or from the action of the elements, or from any unforeseen difficulties which may arise or be encountered in the prosecution of the Services until the same is fully completed and accepted by City.

9.3 Liquidated Damages. The Parties agree that City has a legitimate interest in ensuring that Contractor provides the Services (including performance of all duties and responsibilities) required under this Agreement in a consistent and reliable manner, and that Contractor's failure to timely provide such Services or to provide them in an inadequate manner will cause City to suffer damages and that it is, and will be, impractical and extremely difficult to ascertain and determine the exact amount of damages or to calculate actual damages. Therefore, in addition to City's right to treat such non-performance as a material breach of, and to terminate, this Agreement, the Parties agree that liquidated damages, as provided herein, represent a reasonable estimate of the monetary damages that reasonably could be anticipated, and that proof of actual damages would be costly or impractical. The Parties specifically confirm the accuracy of the statements made above and the fact that each Party has had ample opportunity to consult with legal counsel and obtain an explanation of the liquidated damage provisions at the time that the Agreement was made. Therefore, in lieu of actual damages, Contractor is subject to payment of \$500 per failure to perform, per day. City may, at its election, deduct any assessed liquidated damages from payment due, or that will become due, to Contractor from City.

9.4 Excusable Delays. Contractor shall not be liable for damages, including liquidated damages, if any, caused by delay in performance of failure to perform due to causes beyond the control of Contractor. Such causes include, but are not limited to, acts of God, acts of the public enemy, acts of federal, state or local governments, acts of City, court orders, fires, floods, epidemics, strikes, embargoes, and unusually severe weather. The term and price of this Agreement shall be equitably adjusted for any delays due to such causes.

9.5 Cooperation; Further Acts. The Parties shall fully cooperate with one another, and shall take any additional acts or sign any additional documents as may be necessary, appropriate or convenient to attain the purposes of the Agreement.

9.6 Governing Law. This Agreement shall be interpreted, construed and governed according to the laws of the State of California. In the event of litigation between the parties, venue in state trial courts shall lie exclusively in the County of Riverside. In the event of litigation in a U.S. District Court, venue shall lie exclusively in the Eastern Division of the Central District of California, located in Riverside, California.

9.7 **Integration.** This Agreement, including the attached Exhibits “A” through “F”, is the entire, complete, final and exclusive expression of the parties with respect to the matters addressed therein and supersedes all other agreements or understandings, whether oral or written, or entered into between Contractor and City prior to the execution of this Agreement. No statements, representations or other agreements, whether oral or written, made by any party which are not embodied herein shall be valid and binding.

9.8 **Severability.** If a term, condition or covenant of this Agreement is declared or determined by any court of competent jurisdiction to be invalid, void or unenforceable, the remaining provisions of this Agreement shall not be affected thereby and the Agreement shall be read and construed without the invalid, void or unenforceable provision(s).

9.9 **Prohibited Interests.** Contractor represents and warrants that it has not employed nor retained any company or person, other than a bona fide employee working solely for Contractor, to solicit or secure this Agreement. Further, Contractor warrants that it has not paid nor has it agreed to pay any company or person, other than a bona fide employee working solely for Contractor, any fee, commission, percentage, brokerage fee, gift or other consideration contingent upon or resulting from the award or making of this Agreement.

9.10 **Amendments.** No amendment to or modification of this Agreement shall be valid unless made in writing and approved by Contractor and City. The City Manager shall have the authority to approve any amendment to this Agreement if the total compensation under this Agreement, as amended, would not exceed the City Manager’s contracting authority under the Cathedral City Municipal Code. All other amendments shall be approved by the City Council. The Parties agree that the requirement for amendments or modifications to be in writing cannot be waived and that any attempted waiver shall be void.

9.11 **No Third Party Beneficiaries.** There are no intended third party beneficiaries of any right or obligation assumed by the Parties.

9.12 **Delivery Of Notices.** All notices required or permitted to be given under this Agreement shall be in writing and shall be given to the respective parties at the addresses listed in Exhibit “D”, or at such other address as the respective parties may provide in writing for this purpose. Such notice shall be deemed made when personally delivered or when mailed, forty-eight (48) hours after deposit in the U.S. Mail, first class postage prepaid and addressed to the party at its applicable address. Actual notice shall be deemed adequate notice on the date actual notice occurred, regardless of the method of service.

9.13 **Binding Effect.** This Agreement shall be binding upon the heirs, executors, administrators, successors and assigns of the Parties.

9.14 **Waiver.** Waiver by any Party to this Agreement of any term, condition, or covenant of this Agreement shall not constitute a waiver of any other term, condition, or covenant. Waiver by any Party or any breach of the provisions of this Agreement shall not constitute a waiver of any other provision, nor a waiver of any subsequent breach or violation of any provision of this Agreement. Acceptance by City of any Services by Contractor shall not constitute a waiver of any of the provisions of this Agreement.

9.15 **Attorney's Fees, Costs and Expenses.** In the event litigation or other proceeding is required to enforce or interpret any provision of this Agreement, the prevailing party in such litigation or other proceeding shall be entitled to an award of reasonable attorney's fees and Costs and Expenses, in addition to any other relief to which it may be entitled.

9.16 **Subcontracting.** Contractor shall not subcontract any portion of the Services, except as expressly stated herein, without prior written approval of City. Subcontracts, if any, shall contain a provision making them subject to all provisions of this Agreement.

9.17 **Counterparts.** This Agreement may be signed in counterparts, each of which shall constitute an original.

9.18 **Authority To Execute.** The person or persons executing this Agreement on behalf of Contractor represents and warrants that he/she/they has/have the authority to so execute this Agreement and to bind Contractor to the performance of its obligations hereunder.

9.19 **Administration and Implementation.** This Agreement shall be administered and executed by the City Manager or his or her designated representative. The City Manager shall have the authority to issue interpretations and to make amendments to this Agreement, including amendments that commit additional funds, consistent with Section 9.10 [Amendment] and the City Manager's contracting authority under the Cathedral City Municipal Code.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed the day and year first above written.

CITY OF CATHEDRAL CITY

CONTRACTOR:

Charles P. McClendon, City Manager

By: Brian Kegler
Its: _____

ATTEST:

By: _____
Its: _____

Tracey R. Hermosillo, City Clerk

APPROVED AS TO FORM:

Eric S. Vail, City Attorney

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

ALL-PURPOSE ACKNOWLEDGMENT NOTARY FOR CALIFORNIA

STATE OF CALIFORNIA)
COUNTY OF RIVERSIDE)
COUNTY OF RIVERSIDE)

On _____, 2024, before me, _____,
Date Name And Title Of Officer (e.g. "Jane Doe, Notary Public")

personally appeared _____,
Name of Signer(s)

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature of Notary Public

OPTIONAL

Though this section is optional, completing this information can deter alternation of the document or fraudulent reattachment of this form to an unintended document.

CAPACIT(IES) CLAIMED BY SIGNER(S)

DESCRIPTION OF ATTACHED DOCUMENT

Signer's Name: _____

- .. Individual
.. Corporate Officer

Title(s)

- .. Partner(s) .. Limited
.. General

.. Attorney-In-Fact

.. Trustee(s)

.. Guardian/Conservator

.. Other: _____

Title or Type of Document

Number Of Pages

Date Of Document

Signer is representing:
Name Of Person(s) Or Entity(ies)

Signer(s) Other Than Named Above

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

ALL-PURPOSE ACKNOWLEDGMENT NOTARY FOR CALIFORNIA

STATE OF CALIFORNIA)
COUNTY OF RIVERSIDE)
COUNTY OF RIVERSIDE)

On _____, 2024, before me, _____,
Date Name And Title Of Officer (e.g. "Jane Doe, Notary Public")

personally appeared _____,
Name of Signer(s)

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature of Notary Public

OPTIONAL

Though this section is optional, completing this information can deter alternation of the document or fraudulent reattachment of this form to an unintended document.

CAPACIT(IES) CLAIMED BY SIGNER(S)

DESCRIPTION OF ATTACHED DOCUMENT

Signer's Name: _____

- .. Individual
.. Corporate Officer

Title(s)

- .. Partner(s) .. Limited
.. General

.. Attorney-In-Fact

.. Trustee(s)

.. Guardian/Conservator

.. Other: _____

Title or Type of Document

Number Of Pages

Date Of Document

Signer is representing:
Name Of Person(s) Or Entity(ies)

Signer(s) Other Than Named Above

EXHIBIT "A"
SCOPE OF SERVICES

Contractor shall replace elevators in the Civic Center complex for City Hall and Police Department based on the following minimum requirements and as more specifically described in the contractor's proposal, incorporated herein as attachment 1 to Exhibit A.

Operations

New automatic Self-Leveling, New Special Emergency Service, New Independent Service, New Inspection Operation, Hoistway Access Switches, OTIS One Platform.

Machine Room Equipment

Power Supply, New Controller, New Soft Starter, New Pump Motor, Power Unit, New Valve.

Door Equipment

New Closed Loop Door Operator, New Door-Protected Device, New Interlocks, Retain Car Door Tracks and Hangers, Retain Hoistway Door Tracks and Hangers, New Hoistway Door Restrictors.

Hoistway Equipment

Retain Car Guides, Retain Car Interior, Retain Flooring, New Pit Switch, New Access Alert Hoistway Safety Device.

Car Fixtures

New Applied Car Operating Panel, New Emergency Car Lighting, New Car Position Indicator, New Audible Signal, New In-Car Direction Lanterns.

Hall Fixtures

New Hall Buttons, New Hall Lanterns

OTIS

HydroFit™ MOD



Otis HydroFit™ MOD Hydraulic Control System

8/1/2024

CUSTOMER NAME

City of Cathedral City
Attn: Patrick Bumstead

Otis Elevator Company

4949 Viewridge Ave
San Diego, CA 92123

PROJECT LOCATION

68700 Avenida Lalo Guerrero
Cathedral City, California, 92234

PROPOSAL NUMBER

F7SD1015/01

We propose to furnish labor and material to provide a microprocessor based HydroFit MOD control system. It is a digital closed-loop microprocessor-based control system specifically designed to meet the particular needs of modernizing hydraulic elevators.

Modernization



Section 1



UNITS

DUTY

The present capacity and speed of the elevators will be retained as follows:

MACHINE #	CAPACITY (Pounds)	SPEED (Feet per Minute)	LANDINGS	OPENINGS
City Hall	3500	100	4	2 Front / 2 Rear
Police	3500	100	4	2 Front / 2 Rear

Modernization



Section 2



OPERATION

NEW AUTOMATIC SELF-LEVELING

The elevator shall be provided with automatic self-leveling that shall typically bring the elevator car level with the floor landings + ¼" regardless of direction of travel. The automatic self-leveling shall correct for over travel or under travel and rope stretch.

NEW SPECIAL EMERGENCY SERVICE

Special Emergency Service operation shall be provided in compliance with the latest applicable revision of the ASME/ANSI A17.1 Code.

Special Emergency Service Phase I to return the elevator(s) non-stop to a designated floor shall be initiated by an elevator smoke detector system or a keyswitch provided in a lobby fixture.

The smoke detector system, if required, is to be furnished by others. The elevator contractor shall provide contacts on the elevator controller to receive signals from the smoke detector system.

A keyswitch in the car shall be provided for in-car control of each elevator when on Phase II of Special Emergency Service.

If an elevator is on independent service when the elevators are recalled on Phase I operation, a buzzer shall sound in the car and a jewel shall be illuminated, subject to applicable codes.

NEW INDEPENDENT SERVICE

When the Independent Service switch in the car operating panel is actuated; it shall cancel previously registered car calls, disconnect the elevator from the hall buttons, and allow operation from the car buttons only. Door operation shall occur only after actuation of the "DOOR CLOSE" button.

NEW INSPECTION OPERATION

For inspection purposes, an enabling keyswitch shall be provided in the car operating panel to permit operation of the elevator from on top of the car and to make car and hall buttons inoperative.

HOISTWAY ACCESS SWITCHES

An enabling keyswitch shall be provided in the car operating panel to render all car and hall buttons inoperative and to permit operation of the elevator by means of an access keyswitch adjacent to the hoistway entrance at the access landing.

OTIS ONE PLATFORM

Otis ONE is an internet of things (IoT) platform that enables advanced monitoring, big data analytics, and predictive maintenance to address potential issues before they occur, increasing elevator uptime and reducing service disruptions. Activation of these features is subject to execution of a separate Otis ONE license and subscription agreement and additional annual subscription fee which is not included in this Contract. Further, the Otis One hardware / equipment shall remain the property of Otis.

Modernization



Optional Otis ONE Subscription

Otis ONE Prime Subscription Features

- IoT connection with continuous elevator data collection
- Monitoring by mechanics and OTISLINE
- Automated performance diagnostics and data analytics
- Over-the-air IoT software updates
- Otis Customer Portal access
- Real-time elevator status
- Performance & usage dashboards
- Service activity detail

Section 3



MACHINE ROOM EQUIPMENT

POWER SUPPLY

The power supply of 480V - 60HZ, alternating current will be retained with the new equipment arranged for this power supply.

NEW CONTROLLER

A microprocessor based HydroFit MOD control system shall be provided to perform all the functions of safe elevator motion and elevator door control. This shall include all the hardware required to connect, transfer and interrupt power, and protect the motor against overloading. The system shall also perform group operational control.

NEW SOFT STARTER

A new solid-state starter will be provided. It will be of the same power requirement and starting configuration as presently exists.

NEW PUMP MOTOR

The existing motor will be replaced with a motor that is of the same power characteristics and starting configuration as presently exists.

POWER UNIT

NEW SUBMERSIBLE

The existing power unit will be replaced with a new power unit. The new power unit consists of a positive displacement pump, motor, integral 4-coil control valve, oil tank and muffler. The pump and motor are submerged and are mounted to the tank with rubber isolators to reduce vibration and noise.

Modernization



NEW VALVE

A new integral 4-coil control valve will be installed to replace the existing valve. The valve consists of up, up leveling, down and down leveling controls along with manual lowering and a pressure relief valve.

Section 4



DOOR EQUIPMENT

NEW CLOSED LOOP DOOR OPERATOR

Install a new closed loop door operator. Car and hoist way doors shall be power operated by means of a closed loop door operator mounted on top of the car designed to give consistent door performance with changes in temperature, wind or minor obstruction in the door track. The system continually monitors door speed and position and adjusts it accordingly to match the pre-determined profile.

NEW DOOR-PROTECTION DEVICE

Install a new solid state, infrared passenger protection device on the car door. Elevator doors shall be provided with a reopening device that will stop and reopen the car door(s) and hoistway door(s) automatically should the door(s) become obstructed by an object or person.

NEW INTERLOCKS

New interlocks will be installed. The interlocks shall prevent operation of the elevator unless all doors for that elevator are closed and shall maintain the doors in their closed position while the elevator is away from the landing.

RETAIN CAR DOOR TRACKS AND HANGERS

The present car door tracks and hangers shall be retained and inspected for proper alignment. Any adjustment required will be accomplished.

RETAIN HOISTWAY DOOR TRACKS AND HANGERS

The present hoistway door tracks and hangers shall be retained.

NEW HOISTWAY DOOR RESTRICTORS

Folding hoistway door restrictors shall be installed.

Section 5



HOISTWAY EQUIPMENT

Modernization



RETAIN CAR GUIDES

The existing car guides shall be retained.

RETAIN CAR INTERIOR

The present car interior shall be retained.

RETAIN FLOORING

The present flooring will be retained.

NEW PIT SWITCH

An emergency stop switch shall be located in the pit accessible from the pit access door.

NEW ACCESS ALERT HOISTWAY SAFETY DEVICE

We will furnish and install all the necessary components, circuitry and wiring for a new Access Alert system, which will operate on the elevator car top and pit.

Access Alert will be installed so the elevator can be controlled in a safe manner when an authorized person accesses the elevator hoistway. The Access Alert system meets all applicable safety codes.

This groundbreaking new product, Access Alert, is specifically designed to:

- Prevent work on top of the elevator without the top of car inspection station engaged properly.
- Prevents moving the elevator on inspection while personnel are in a potentially unsafe position.
- Prevent working in the elevator pit, while the pit stop switch is not engaged properly.
- Meet applicable building and elevator codes.

Similar to the seatbelt alarm in your car, Access Alert provides a constant, noticeable reminder to anyone accessing the hoistway that they need to engage the stop switch before starting work. We believe the simplicity, ease of installation, and cost-effectiveness of this product will be an important way for you to invest in improving safety inside your facility.

Section 6



CAR FIXTURES

NEW APPLIED CAR OPERATING PANEL

An applied car operating panel shall be furnished. The panel shall contain a bank of mechanical illuminated buttons marked to correspond with the landings served, an emergency call button, emergency stop button, door open and door close buttons and a light switch. All buttons, when applicable, to be long life LED illumination. This panel shall be equipped with a button that shall initiate two-way communication between the car and a location inside the building, switching over to another location if call is unanswered.

Modernization



NEW EMERGENCY CAR LIGHTING

An emergency power unit employing a 6-volt sealed rechargeable battery and totally static circuit shall be provided. The power unit shall illuminate the elevator car and provide current to the alarm bell in the event of normal power failure. The equipment shall comply with the requirements of the latest applicable revision of the ASME/ANSI A17.1 Code.

NEW CAR POSITION INDICATOR

A car position indicator shall be installed. The position of the car in the hoistway shall be shown by illumination of the indication corresponding to the landing at which the car is stopped or passing.

NEW AUDIBLE SIGNAL (INDICATES PASSING OR STOPPING AT A LANDING)

An audible signal shall sound in the car to tell passengers that the car is either stopping or passing a landing served by the elevator.

NEW AUDIBLE SIGNAL

Equipment shall be furnished to allow an audible announcement in each car of the name of the next selected landing at which the elevator will stop and the committed direction of travel. Several advisory messages shall also be available to indicate the need for elevator on special service or passenger delay of elevator.

NEW "IN-CAR" DIRECTION LANTERNS

Direction lantern(s) shall be mounted in car entrance jamb(s), visible from the corridor, which when the car stops and the doors are opening shall indicate the direction the car is traveling. A chime shall also be furnished on the car that will sound once for the "UP" direction and twice for the "DOWN" direction as the doors are opening.

Section 7



HALL FIXTURES

NEW HALL BUTTONS

New hall buttons shall be installed at each landing. An up button and a down button at each intermediate landing and a single button at each terminal landing shall be installed. All buttons, when applicable, shall be long-life LED illumination.

NEW HALL LANTERNS

Direction lanterns shall be provided at all hoistway entrances, with "UP" and "DOWN" indicators at intermediate landings and single indicators at terminal landings. A chime shall sound once for the "UP" direction and twice for the "DOWN" direction to announce the impending arrival of the associated elevator car.

Modernization



Section 8



HEALTH PRODUCTS

No Health Products Specified

Section 9



WORK BY OTHERS – NOT IN CONTRACT

The following items must be performed by others and you agree to provide this work in accordance with the applicable codes and enforcing authorities:

WORK BY OTHERS SCHEDULING

All “Work by Others” must either be completed prior to our manning the job or be properly scheduled as to not obstruct the progress of the project.

AIR CONDITIONING

Provide suitable ventilation and cooling equipment, if required, to maintain the machine-room temperature between 60°F and 100°F. The relative humidity should not exceed 95 percent non-condensing.

BUILDING POWER

Provide electrical power for light, tools, hoists, etc. during installation as well as electric current for starting, testing, and adjusting the elevator. Power of permanent characteristics to be provided to properly operate all the elevators concurrently scheduled to be modernized. Power must be a 3-phase 4 wire system with ground and bonded disconnects. Grounded leg delta systems are not acceptable.

SMOKE AND HEAT SYSTEM

Provide elevator lobby, machine room and hoistway smoke detecting devices located as required and wired from the fire control center to a controller in the machine room. Hoistway devices are required to be made accessible from outside the elevator hoistway. Coordinate signal connections and necessary testing with the Elevator Contractor. Provide the following zones and locate signal circuits in a properly labeled junction box in the machine room:

Main Floor Recall: Provide one set of normally closed contacts that will open when any smoke sensor related to the elevators at the designated main landing senses smoke. This excludes other devices located in the machine room, hoistway or main egress floor.

Modernization



Alternate Floor Recall: Provide one set of normally closed contacts that will open when the smoke sensor at the main egress floor senses smoke.

Machine Room/Hoistway Recall: Provide one set of normally closed contacts that will open when any smoke sensor located in the machine room or hoistway/pit senses smoke.

SPRINKLERS

Provide code compliant sprinkler system, as required, in the hoistway, pit and machine room. If sprinklers are being installed or altered in the hoistway(s), pit or the machine rooms, a means must be provided to disconnect three-phase power before water is applied. This is usually accomplished with a shunt trip breaker that must be located outside the elevator machine room. The shunt trip breaker may be activated by heat detectors located within 24" of the sprinkler heads and arranged to trip at a lower temperature than the sprinkler heads. A heat detector is not required in the pit if the sprinkler head is within 24" of the pit floor. Heat and smoke devices in elevator hoistways must be installed with UL rated and lockable panels that are accessible for servicing from outside the hoistway. The panel interiors are to be guarded using a minimum 13 gauge metal with a pattern of maximum 3/4 inch holes.

CUTTING AND PATCHING

Do any cutting, (including cutouts to accommodate hall signal fixtures, entrances and/or machine room access) patching and painting of walls, floors or partitions.

MAIN DISCONNECT

Provide a fused lockable disconnect switch or circuit breaker for each elevator per the National Electrical Code with feeder or branch wiring to the transformer. Size to suit elevator contractor. Provide a SHUNT TRIP disconnect, as required, if sprinklers are being provided. Provide suitable connections from the main disconnect to the elevator control equipment.

Electrical Feeder system to limit available short circuit to not more than 10k amps at the load side of the elevator main line disconnect.

GROUND WIRE

Provide a properly sized ground wire from the elevator controller(s) to the primary building ground.

EMERGENCY COMMUNICATIONS – Phone Only

Provide a continuously monitored phone line terminating at Otis controller.

EMERGENCY COMMUNICATIONS – Voice / Video / Text

Provide a dedicated 125 volt, 15 ampere single-phase power supply with a fused SPST disconnect switch or circuit breaker, per group of elevators in the same location as the 3-phase elevator disconnect. This disconnect or breaker shall be capable of being locked in the open position per National Electrical Code or Canadian Electrical Code, as applicable. If Emergency (standby) power system is supplied this disconnect must be arranged to be feed from the same emergency (standby) power transfer switch as the elevator group. Provide a dedicated RJ45 internet network connection in each control room, minimum download speed 5Mbps per elevator, minimum upload speed 1Mbps per elevator.

Number of Elevators	Min. Download Bandwidth (Mbps)	Min. Upload Bandwidth (Mbps)
1 - 3	5	1
4	10	2

Modernization



GFCI OUTLETS

Provide 120volt GFCI type convenience outlets in the machine room and in each pit. . Provide additional non-GFCI outlet in each pit for use by sump pump. Pits subject to sprinklers shall have NEMA 4 rated fixtures if located below 48" above pit floor.

CAR LIGHT POWER SUPPLY AND DISCONNECT

For each car provide a 120 volt AC, 15 amp, single-phase power supply with fused disconnect switch (or circuit breaker) capable of being locked in the open (off) position with feeder wiring to each controller located in the machine room.

VIDEO DISPLAY POWER SUPPLY AND DISCONNECT

For each car provide a 120 volt AC, 15 amp, single-phase power supply with fused disconnect switch (or circuit breaker) capable of being locked in the open (off) position and with GFCI outlet located in the machine room.

REMOTE PANELS

Provide required conduit, with adequate pull boxes and ells from the elevator hoistway(s) to the location or locations required to facilitate the installation of Lobby Panels, Fire Control Room Panels or Elevator Monitoring Systems. Size and number as specified by Otis. Leave a measured pull tape in the conduit. Otis to furnish and pull required conductors.

EMERGENCY (STANDBY) POWER

If emergency power is available, verify and provide the following:

- a. Power that meets the load characteristic requirements of the new control system. Power that is capable of operating and providing sufficient power to non-linear elevator loads and that is capable of absorbing regenerated power resulting from running elevators with overhauling loads.
- b. Two conductors to the machine room from a normally closed auxiliary contact on the Owner's EP transfer switch. Contacts to open when power transfers to the emergency source.
- c. Two additional conductors to the machine room from an adjustable timed relay on the Owner's EP transfer switch to indicate "request to transfer" from standby to normal power.
- d. Power for 115VAC circuits that supply elevator cab lights, cab fan, communication means, EMS, Lobby Panels, and Compass dispatching systems (if applicable).
- e. Power for machine room lighting, ventilation and cooling means.

ROOF LIGHTING

Lighting is required to illuminate machine room access paths on the roof.

LIGHTING

Provide sufficient lighting in the buildings common areas to facilitate a safe working environment. Provide new or modify machine room lighting to provide a minimum of 19 ft. candles of illumination and new pit lighting to provide a minimum of 10ft. candles of illumination. The machine room light switch shall be located within 18" of the lock-set side of the entry door. Pit light switches shall be adjacent to the pit

Modernization



ladder and a minimum of 24" above the threshold level. Lighting must have code compliant guards of either grounded metal, plastic or comparable. Pits subject to sprinklers shall have NEMA 4 rated fixtures.

PROJECT BEING "DRIED-IN"

Work, as required, to keep the elevator lobbies, hoistway, machine room and storage area "dried-in" for the entire length of the project.

MACHINE ROOM ACCESS

Provide a self-locking and self-closing door for the elevator machine room. Access door to be adequately sized to accept our equipment. Modify machine room access, as required, to comply with code and facilitate safe egress of all equipment.

FIRE EXTINGUISHER

Provide fire extinguisher in elevator machine room.

NON-ELEVATOR MATERIAL IN HOISTWAY

Remove or encapsulate, as required, any non-elevator related pipes or wiring located in the elevator machine room or hoistway.

HOISTWAY VENTILATION

Provide code compliant hoistway ventilation. Code requires a means to prevent the accumulation of hot air and gasses at the top of the hoistway. Pressurizing the hoistways, or providing vents from the top of the hoistway to the outside of the building usually accomplishes this. Vents shall not be less than 3 1/2% of the area of the hoistway nor less than 3 sq. ft. for each elevator car, whichever is greater. You may not vent the hoistway to the machine room. If the hoistway vents must run through the machine room, they must be enclosed in a fire rated structure and not violate clearances around our equipment.

HOISTWAY LEDGES

Provide a 75o angle constructed of a non-combustible material on all ledges that are 2" greater in the hoistway, excluding multi-hatch divider beams.

SUMP HOLE GRATING

Provide a flush grating over the sump hole located in the elevator pit.

STORAGE

Provide dry, protected and secure storage space adjacent to the hoistway(s). Otis shall be compensated for material delivered that is stolen or removed from the jobsite.

DISPOSAL

The disposal of removed elevator components; machines, controllers, ropes, hydraulic fluid, oils, buffers and packing materials from the new equipment and any and all related materials shall be the sole responsibility of the Customer or owner. If a dumpster is provided on site, we will deposit waste materials in the dumpster or at an agreed upon on-site location for removal by the Customer or owner.

PIT LADDERS

Provide a pit ladder, as required, in each pit that does not have walk-in access doors. Ladder shall extend 48" above first landing access door.

OPERATING ELEVATORS FOR OTHER TRADES

Modernization



If we are required to operate an elevator to facilitate the work of other trades (e.g., sprinklers, smoke sensors, ledges, etc.) then we shall be compensated for this lost time and the project schedule shall also be modified.

EMERGENCY RETURN UNIT (ERU)

If an ERU battery-operated lowering device is being provided with your hydraulic elevator modernization than others are to provide an auxiliary contact in either the existing lockable disconnect (if currently code compliant) or in a new code compliant lockable disconnect.

ASBESTOS

Should any asbestos be found to be present in the building which is related to any of our work, it shall be the responsibility of others to monitor, abate, contain or prepare the workplace as safe for our employees to work within or about. Otis will not be responsible for working with asbestos which may be disturbed or uncontained. Otis will not be responsible for any costs associated with delay of the job should asbestos be detected or require addressing by others for us to proceed. This includes but is not limited to re-mobilization charges which may be applied.

HAZARDOUS MATERIALS

You agree to notify Otis if you are aware or become aware prior to the completion of the work of the existence of asbestos or other hazardous material in any elevator hoistway, machine room, hallway or other place in the building where Otis' personnel are or may be required to perform their work. In the event it should become necessary to abate, encapsulate or remove asbestos or other hazardous material from the building, you agree to be responsible for such abatement, encapsulation or removal, and any governmental reporting, and in such event Otis shall be entitled to (i) delay its work until it is determined to Otis' satisfaction that no hazard exists and (ii) compensation for delays encountered.

MATERIAL RESPONSIBILITY

Otis maintains no responsibility for material delivered to the jobsite. The Customer is financially responsible for all cost to replace any damaged, stolen or missing material or equipment. Otis will not be responsible for deductibles on "Builder's Risk" insurance policies. Otis will provide a change order, police report and affidavits as needed to substantiate the claim. Otis will not procure replacement equipment until a signed change order is received.

LOCKOUT TAG OUT

In furtherance of OSHA's directive contained in 29 C.F.R. § 1910.147(f)(2)(i), which requires that a service provider (an "outside employer") and its customer (an "on-site employer") must inform each other of their respective lock out/tag out ("LOTO") procedures whenever outside servicing personnel are to be engaged in control of hazardous energy activities on the customer's site, Otis incorporates by reference its mechanical LOTO procedures and its electrical LOTO procedures. These procedures can be obtained at www.otis.com by (1) clicking on "The Americas" tab on the left side of the website; (2) choosing "US/English" to take you to the "USA" web page; (3) clicking on the "Otis Safety" link on the left side of the page; and (4) downloading the "Lockout Tagout Policy Otis 6.0" and "Mechanical Energy Policy Otis 7.0," or the then most current version, both of which are in .pdf format on the right side of the website page. Customer agrees that it will disseminate these procedures throughout its organization to the appropriate personnel who may interact with Otis personnel while Otis personnel are working on site at Customer's facility.

CONFINED SPACES

The machine room, hoistway, pit and mezzanine ("Elevator Spaces") may be considered Permit- Required Confined Spaces as defined by the Occupational Safety and Health Organization ("OSHA"), 29 C.F.R. § 1910.146(b) and § 1926 Subpart AA. Otis has a documented process to control or eliminate hazards and

Modernization



classify such Elevator Spaces as non-permit required confined spaces. In the event that the Customer, others, or unique site conditions or hazards (such as chemical manufacturing sites) require Otis to handle such Elevator Spaces as Permit-Required Confined Spaces, the Customer or owner will be responsible for supplying, at its expense, all resources, including monitoring, permitting, attendants and rescue planning associated with handling such Elevator Spaces as Permit-Required Confined Spaces. The Customer or owner is required to inform Otis of all known or potential hazards related to Elevator Spaces that Otis may be required to access prior to Otis performing any work in such spaces. Further, the Customer or owner is required to communicate any changes in the conditions associated with such Elevator Spaces or activities in or around such spaces that could introduce a hazard into such spaces.

Section 10



GENERAL REQUIREMENTS

EXAMINATION OF EQUIPMENT

Except insofar as your equipment may be covered by an Otis maintenance or service contract, it is agreed that we will make no examination of your equipment other than that necessary to do the work described in this Contract and assume no responsibility for any part of your equipment except that upon which work has been done under this contract.

RE-MOBILIZATION

You agree to pursue and schedule the work by other trades in a timely manner so as to not interrupt our work. Should our crew(s) have to suspend work on the job to await the conclusion of work by others not party to this contract, we shall be entitled to a re-mobilization charge of **two thousand (\$2,000) dollars**. We shall also extend the stated durations to the extent that we are delayed.

INSURANCE

OTIS

Otis agrees to maintain General Liability coverage in the amount of \$1,000,000 per occurrence and \$2,000,000 in the aggregate, Automobile Liability in the amount of \$1,000,000 Combined Single Limit for Bodily Injury and Property Damage, Worker's Compensation in statutory limits. Employer's Liability in the amount of \$1,000,000 for Each Accident, Each Employee – Disease. We shall maintain worker's compensation and employers' liability insurance covering our liability for injury or death sustained by our employees, and comprehensive general liability insurance.

CUSTOMER

You shall insure that all risk insurance upon the full value of the Work and material delivered to the job site is maintained at no cost to us.

CERTIFICATES

If either party so requires, in writing, the other party shall furnish a copy of the certificates of insurance evidencing the above insurance coverages.

Modernization



PRE-EXISTING CONDITIONS HYDRAULIC

We have not included for any additional costs associated with identifying or correcting car weights previously increased or decreased more than the ASME code allowance of 5% of original design.

PAYMENT AND SCHEDULE OF VALUES

You agree to be bound and pay in accordance with the supplied schedule of values. We shall be paid for our material delivery invoice prior to starting installation work. We shall be paid in full for all change orders and the base Contract amount no less than 95% prior to scheduling an inspection and/or turnover of the elevators to you for use. Otis reserves the right at its absolute discretion to discontinue work or not turn over elevators unless payments are current.

- Our quoted price is based on the "Initial Payment" equaling **50%** of Contract award. This amount PLUS a fully executed subcontract must be received prior to releasing equipment for manufacturing or scheduling any other work. Refer to the "Schedule of Values" below.
- Otis will mobilize after the "Material Delivery Payment" is received. See "Schedule of Values" below.
- If Otis is directed by you to furnish any labor, service, or material that is outside of the mutually agreed upon scope of work of this Contract ("Out of Scope Work"), Otis may agree to perform such Out of Scope Work (1) subject to receipt of a written notice to proceed prior to commencement of any such Out of Scope Work; and (2) contingent upon receipt of a mutually agreed upon and executed change order within thirty (30) calendar days of such written notice to proceed. If the parties are unable to agree to terms that lead to the issuance of a mutually agreed upon and executed change order within such thirty (30) day period, Otis may suspend the Out of Scope Work. Notwithstanding any other provision, language, term or condition to the contrary, Otis shall not be liable for any project delays and/or damages, including but not limited to liquidated damages, associated with a delay in the issuance of a mutually agreed upon and executed change order.

SUBSTANTIAL COMPLETION/"LABOR PROGRESS PAYMENTS"

- This payment is due upon substantial completion of each modernized elevator. The "Labor Progress Payment" amount shown on the SOV is divided by the total number of elevators being modernized as a part of this Contract. Substantial completion is defined as a functional elevator that is acceptable by the authority having jurisdiction as useable for temporary or general use. Any agreed upon punch-list items will be corrected within a mutually agreeable timeframe. This payment, however, is still due upon substantial completion of each elevator.
- Final retention payment shall be due within thirty (30) days after acceptance of each elevator installation. Otherwise, warranties shall be suspended or terminated at Otis' absolute discretion.
- All change orders must be executed and paid prior to scheduling a final inspection and turnover of each elevator to customer.
- Otis will not agree to any language referencing or implying "pay when paid." This Contract is between Otis Elevator and referenced entity. The attached payment schedule ("Schedule of Values") is not contingent upon said entity's ability to be paid by others or any other factor or event not described above.

Modernization



- A processing fee will be applied to credit card payments.

SCHEDULE OF VALUES:

SCHEDULE OF VALUES			
Base Contract Amount: \$275,877			
DUE DATE	DESCRIPTION	%	VALUE
Due within 30 days from date of invoice or prior to release of factory orders, whichever occurs first.	Engineering/Drawings/Mobilization "Initial Payment"	50%	\$137,939
Due within 30 days from date of invoice or prior to installation, whichever occurs first. Installation will not commence until this material payment is made.	Materials for project "Material Delivery Payment"	25%	\$68,969
Due within 30 Days from substantial completion of each elevator.	Installation labor "Labor Progress Payments"	25%	\$68,969

DOWN PAYMENT (OPTION)

DISCOUNT SCHEDULE

- **Pre-Payment Discount** - Otis will offer the below discount schedule for larger pre-payment amounts:
 - **75% Pre-Payment** 2% discount off base bid
 - **90% Pre-Payment** 3% discount off base bid

Otis may add a surcharge to the Purchase Price to compensate for changes to import tariffs implemented **after the date hereof** by the United States government. The surcharge will be in an amount as determined by Otis that either approximates the increase in cost to the actual products imported hereunder due to such tariff increases, or in an amount that allocates the overall increases in import tariffs across Otis' United States business to this project in proportion to the amount of imported materials allocated to this project.

LEAD TIME AND DURATION

We anticipate approximately 12 weeks manufacturing time from receipt of approvals and down payment.

Modernization

OTIS

Thereafter, we expect the modernization to take approximately 5 weeks per car. All work will be performed during our regular working hours of our regular working days.

SCHEDULE

Our proposal is based on a delivery date of March 2025. If the delivery date is delayed 90 calendar days or greater, customer agrees to pay applicable factory material price increases. A fully executed change order and full payment of the price increase, in addition to full payment of the required down payment by Customer is required prior to the factory material being ordered and released. Additionally, if your project schedule changes and extends installation or completion of labor into a future year or year(s), Customer agrees to pay applicable labor escalation price increases. A fully executed change order regarding the labor escalation price increase must be executed prior to mobilization and the start of any work.

Due to current market conditions the availability of elevator installation labor is limited. If this proposal is not accepted within 30 days, prior to acceptance of any award Otis reserves the unilateral right to decline the award based on a review of the project schedule and our labor availability/commitments.

CODE CLARIFICATIONS

ASME A17.1 / CSA B44 (2016 or earlier): It is our understanding the International Building Code (IBC), 2018 Edition is NOT applicable to this project. Otis has included an emergency communication system that conforms to ASME A17.1 / CSA B44 (2016 or earlier), Requirement 2.27.1.1. It should be noted that at the present time there is a potential conflict concerning the emergency communication system requirements between IBC 2018 and ASME A17.1 / CSA B44 (Safety Code for Elevators and Escalators) and you agree to hold Otis harmless for any claim, loss, cost, or damage in connection with any such conflict.

Work By Others

Customer or owner will provide one (1) dedicated outside telephone line to the elevator machine room as described in the "Work by Others" section.

Section 11

ALTERNATES

Alternate 1:

ADD: \$8,000.00 for Otis One PRO Emergency Communication System

Please indicate your intention to choose this option by initialing here: _____

The extent of the work to be performed is either described above or in the attached specification which is incorporated into and made a part of this document.

PRICE \$275,877 "Cost w/Tax" Or "Cost w/o Tax"
DollarsType Dollar Amount

This price is based on a **fifty percent (50%)** downpayment in the amount of \$137,939

Modernization



This proposal, including the provisions printed on the pages following, shall be a binding contract between you, or the party identified below for whom you are authorized to contract, and us when accepted by you and our authorized representative through execution of this proposal; or by your authorizing us to perform work for the project and our commencing such work. This quotation is valid for thirty (30) days from the date of submission unless changed by us prior to a fully executed contract.

Accepted in Duplicated

Submitted by: _____
Jessica Williams

CUSTOMER

Approved by Authorized Representative

Date: _____

Signed: _____

Print Name: _____

Title: _____

Name of Company: _____

OTIS ELEVATOR COMPANY

Approved by Authorized Representative

Date: _____

Signed: _____

Print Name: _____

Title: _____

Modernization



TERMS AND CONDITIONS

This Contract constitutes the entire understanding between the parties regarding the subject matter hereof and may not be modified by any terms on your order form or any other document and supersedes any prior written or oral communication relating to the same subject. Any amendment or modifications to this Contract shall not be binding upon either party unless agreed to in writing by an authorized representative of each party. Both parties agree that any form issued by you that contains any terms that are inconsistent with those contained herein shall not modify this Contract, nor shall it constitute an acceptance of any additional terms.

The work shall be performed for the agreed price plus any applicable sales, excise or similar taxes as required by law. In addition to the agreed price, you shall pay to us any future applicable tax imposed on us, our suppliers or you in connection with the performance of the work described.

This quotation is subject to change or withdrawal by us prior to written acceptance.

We warrant to you that the work performed by us hereunder shall be free from defects, not inherent in the quality required or permitted, in material and workmanship for one (1) year from the date of substantial completion. Our duty and your remedy under this warranty are limited to our correcting any such defect you report to us within the warranty period by, at our opinion, repair or replacement, provided all payments due under the terms of this Contract have been made in full. All parts used for repair or replacement under this warranty shall be good quality and furnished on an exchange basis. Printed circuit boards used for replacement parts under this warranty may be refurbished boards. Exchanged parts become our property. This warranty excludes any damage due to ordinary wear and tear and any damage due to any reason beyond our reasonable control including but not limited to vandalism, abuse, misuse, neglect, modifications not performed by us, or improper or insufficient maintenance by others. THE EXPRESS WARRANTIES SET FORTH IN THIS CONTRACT ARE THE EXCLUSIVE WARRANTIES GIVEN: WE MAKE NO OTHER WARRANTIES EXPRESS OR IMPLIED, AND SPECIFICALLY MAKE NO WARRANTY OF MERCHANTABILITY OR OF FITNESS FOR ANY PARTICULAR PURPOSE; AND THE EXPRESS WARRANTIES SET FORTH IN THIS CONTRACT ARE IN LIEU OF ANY SUCH WARRANTIES AND ANY OTHER OBLIGATION OR LIABILITY ON OUR PART.

We shall perform the work during our regular working hours of our regular working days unless otherwise agreed in writing. You shall be responsible for providing suitable storage space at the site for our material.

You shall obtain title to the equipment furnished hereunder when final payment for such equipment is received by us. In addition, you shall be granted a license to use software incorporated into such equipment solely for operating such equipment and in accordance with the terms regarding licensing further below. Further, Customer shall not have the right to take title or possession of any of Otis' tools or machinery used by Otis in providing its services or work.

Any drawings, illustrations or descriptive matter furnished with the proposal are submitted only to show the general style, arrangement and dimensions of the equipment.

Payments shall be made pursuant to the payment schedule above and on the following terms: If the work is not completed within a thirty day period, monthly progress payments shall be made based on the value of any equipment ready or delivered, if any, and labor performed through the end of the month less the agreed upon retainage and the aggregate of previous payments. We shall be paid in full for all change orders and no less than the percentage base contract amount stated above prior to scheduling an inspection and/or turnover of the elevators to you for use. The retainage shall be paid when the work is completed. We reserve the right to discontinue our work at any time until payments shall have been made as agreed and we have assurance satisfactory to us that subsequent payments will be made when due. Payments not received within thirty (30) days of the date of invoice shall be subject to interest accrued at the rate of eighteen percent (18%) per annum or at the maximum rate allowed by applicable law, whichever is less. We shall also be entitled to reimbursement from you of the expenses, including attorney's fees, incurred in collecting any overdue payments.

Any material removed by us in the performance of the work shall become our property.

Our performance is conditioned upon your securing any required governmental approvals for the installation of any equipment provided hereunder and your providing our workmen with adequate electrical power at no cost to us with a safe place in which to work, and we reserve the right to discontinue our work in the building whenever in our opinion working conditions are unsafe. If overtime work is mutually agreed upon and performed, an additional charge thereof, at our usual rates for such work, shall be added to the Contract price. The performance of our work hereunder is conditioned on your performing the preparatory work and supplying the necessary data specified on the front of this proposal or in the attached specification, if any. Should we be required to make an unscheduled return to your site to begin or complete the work due to your request, acts or omissions, then such return visits shall be subject to additional charges at our current labor rates. We disclaim any responsibility for claims or damages associated with elevator service interruptions caused by or resulting from work performed by you or others retained by you to perform work.

We shall retain a security interest in all material furnished hereunder and not paid for in full. You agree that a copy of this Contract may be used by us as a financing statement for the purpose of placing upon public record our interest in any material furnished hereunder, and you agree to execute a UCC-1 form or any other document reasonably requested by us for that purpose.

Except insofar as your equipment may be covered by an Otis maintenance or service contract, it is agreed that we will make no examination of your equipment other than that necessary to do the work described in this Contract and assume no responsibility for any part of your equipment except that upon which work has been done under this Contract.

Modernization



We do not agree under our warranty to bear the cost of repairs or replacements due to vandalism, abuse, misuse, neglect, normal wear and tear, modifications not performed by us, improper or insufficient maintenance by others, or any cause beyond our control.

We shall conduct, at our own expense, the defense of any claim, suit or action alleging that, without further combination, the use by you of any equipment provided hereunder directly infringes any patent, but only on the conditions that (a) we receive prompt written notice of such claim, suit or action and full opportunity to assume the sole defense thereof, including settlement and appeals, and all information available to you for such defense; (b) said equipment is made according to a specification or design furnished by us; and (c) the claim, suit or action is brought against you. Provided all of the foregoing conditions have been met, we shall, at our own expense, either settle said claim, suit or action or shall pay all damages excluding consequential damages and costs awarded by the court therein and, if the use or resale of such equipment is finally enjoined, we shall at our option, (i) procure for you the right use of the equipment, (ii) replace the equipment with equivalent noninfringing equipment, (iii) modify the equipment so it becomes noninfringing but equivalent, or (iv) remove the equipment and refund the purchase price (if any) less a reasonable allowance for use, damage or obsolescence.

Under no circumstances shall either party be liable for special, indirect, liquidated, or consequential damages or losses of any kind including, but not limited to, loss of revenues, loss of profits, loss of rents, loss of good will, loss to business opportunity, or harm to business reputation, in contract, tort, including negligence, warranty or otherwise, notwithstanding any indemnity provision to the contrary. We will use commercially reasonable efforts to complete the work set forth herein with minimal disruption to elevator service for you and your tenants (as applicable). Notwithstanding the foregoing, the parties acknowledge that delays and disruptions in service are a normal result of the type of work described herein, and notwithstanding any other representations, warranties or indemnity obligations hereunder, we will have no liability for any direct or indirect damages resulting from interruptions in elevator service during the performance of our obligations. Neither party's liability to the other for any reason arising from this Contract shall exceed the value of the Contract.

Otis shall not be liable for any loss, damage, or delay nor be found to be in default or breach due to any cause beyond its reasonable control including, but not limited to acts of God or nature: fire; explosion; theft; floods; water; weather; traffic conditions; epidemic, pandemic, quarantine or other local, state, or federal government action in response thereto; sabotage; national emergency; act of terrorism; earthquake; riot; civil commotion; war; vandalism; national or local labor strikes, lockouts, other labor disputes; misuse, abuse, neglect, mischief, or work by others (collectively "Causes Beyond Otis' Reasonable Control"). Otis shall be allowed a reasonable amount of additional time for the performance of the Work due to Causes Beyond Otis' Reasonable Control. Otis' ability to maintain scheduled job progress is further conditioned upon the timely furnishing to Otis by Customer of completed and code compliant hoistway(s) (wellway) and machine rooms, necessary approvals and power of proper characteristics for Otis' uninterrupted use.

The products and/or services being provided may result in the collection of Personal Information. The Parties will comply with applicable Data Privacy Laws as they pertain to personal information processed in connection with activity under this Contract. "Personal Information" shall mean information and data exchanged under this Contract related to an identifiable natural person. "Processing" of Personal Information shall mean the operation or set of operations whether automated or not, performed on Personal Information such as collecting, recording, organizing, structuring, storing, adapting, altering, retrieving, consulting, using, disclosing, sharing or erasing. "Controller" shall mean the party that determines the purposes and means of processing Personal Information. With respect to any Personal Information provided by you to Otis, you shall be the Controller and you warrant that you have the legal right to share such Personal Information with Otis and you shall be responsible for all obligations relating to that data, including without limitation providing notice or obtaining consent as may be required by law. Once you have lawfully provided Personal Information to Otis, you and Otis shall become co-Controllers. Otis may share such Personal Information internally, across borders and with service providers in accordance with applicable Data Privacy Laws. Otis transfers information subject to the corporate rules of its parent company. Otis may store Personal Information provided by you on servers located and accessible globally by Otis and its parent and their services providers. The parties agree to cooperate and to take reasonable commercial and legal steps to protect Personal Information against undue disclosure. In this regard each party shall notify the other in the event of a data breach, which shall include the actual or unauthorized access to or possession of, or the loss or destruction of, Personal Information, whether intentional or accidental. The party whose system was compromised in the data breach incident shall be responsible for any notifications and associated costs. Should either party receive in any form, (i) a complaint or allegation indicating a violation of applicable data privacy law, (ii) a request seeking access to correct or delete Personal Information or (iii) an inquiry or complaint related to the processing of personal information, said party shall take reasonable commercial steps to immediately notify the other party.

Your remedies set forth herein are exclusive and our liability with respect to any contract, or anything done in connection therewith such as performance or breach thereof, or from the manufacture, sale, delivery, installation, repair or use of any equipment furnished under this contract, whether in contract, in tort, in warranty or otherwise, shall not exceed the price for the equipment or services rendered.

It is agreed that after completion of our work, you shall be responsible for ensuring that the operation of any equipment furnished hereunder is periodically inspected.

By accepting delivery of parts incorporating software you agree that the transaction is not a sale of such software but merely a license to use such software solely for operating the unit(s) for which the part was provided, not to copy or let others copy such software for any purpose whatsoever, to keep such software in confidence as a trade secret, and not to transfer possession of such part to others.

Modernization



except as a part of a transfer of ownership of the equipment in which such part is installed, provided that you inform us in writing about such ownership transfer and the transferee agrees in writing to abide by the above license terms prior to any such transfer.

Our work shall not include the identification, detection, abatement, encapsulation or removal of asbestos, polychlorinated biphenyl (PCB), or products or materials containing asbestos, PCB's or other hazardous substances. In the event we encounter any such product or materials in the course of performing work, we shall have the right to discontinue our work and remove our employees from the project until you have taken the appropriate action to abate, encapsulate or remove such products or materials, and any hazards connected therewith, or until it is determined that no hazard exists (as the case may require). We shall receive an extension of time to complete the work hereunder and compensation for delays encountered as a result of such situation.

This Contract constitutes the entire understanding between the parties regarding the subject matter hereof and may not be modified by any terms on your order form or any other document and supersedes any prior written or oral communication relating to the same subject. Any amendment or modifications to this Contract shall not be binding upon either party unless agreed to in writing by an authorized representative of each party. Both parties agree that any form issued by you that contains any terms that are inconsistent with those contained herein shall not modify this Contract, nor shall it constitute an acceptance of any additional terms.

<p>OTIS ELEVATOR COMPANY ("Contractor")</p> <p>ACKNOWLEDGMENT</p> <p>MODERNIZATION</p>	Contract Number: TBD
	Your Order Number: TBD
	Acknowledgment Date: November 25, 2024
<p>Thank you for your order. Please refer to our contract number in all correspondence. Address all inquiries to: OTIS ELEVATOR COMPANY</p>	Sold To: City of Cathedral City ("City" or "you")
	Job Location: (Please Add Location)

Thank you for allowing Contractor the opportunity to do business with you. Contractor’s agreement to provide labor, services, and materials (collectively, the “Work”) is conditioned by the following terms in this document (hereinafter called, the “Acknowledgment”) and Contractor’s proposal dated 12/11/2024 (the “Proposal”), both of which are incorporated herein by reference and made a part of the contract between Contractor and City. Collectively, the Acknowledgment, Proposal, and any other contract document agreed to between Contractor and City for the Work are hereinafter referred to as the “Contract”. In the event of a conflict between the Acknowledgment, Proposal, or any other document, the terms in this Acknowledgment control (the only exception to this is limited to if the terms of the Proposal give Contractor greater rights or protections, then in such limited instances, the Proposal controls). References to specific sections or articles below, if any, are not meant to limit the applicability of such modifications to only such sections or articles, to the extent that the modifications may also apply to other sections or articles of the Contract.

Contractor will accept the terms of the prime contract and contract documents only to the extent that those terms have been presented to Contractor and only to the extent they do not add to or conflict with this Acknowledgment or the Proposal.

Notwithstanding any other provision to the contrary (including without limitation provisions regarding order of precedence) whether in this document or any other contract document, Contractor’s Work shall be performed in accordance with the applicable law, code, or regulation (collectively “Code”) in effect on the date that Contractor submitted to you it’s initial proposal and not any subsequently changed, amended, altered, or implemented Code.

AGREEMENT FOR MINOR CONSTRUCTION SERVICES

Section 1.1, Section 8:

The Contract may be terminated for default only and provided that Contractor is first allowed ten (10) days to commence to cure the deficiency upon receipt by Contractor of written notice specifying in detail the deficiency. In the event the Contract is terminated through no fault of Contractor, City agrees to pay for all material furnished, or manufactured, and labor performed up to the date of termination, including a reasonable margin.

In the event City sells the building or its interest is terminated prior to the expiration of the Contract, City agrees to assign the Contract to the new owner or successor and to cause the new owner to assume City’s obligations under the Contract. If the new owner or successor fails to assume City’s obligations under the Contract, then City agrees to pay Contractor all sums due for the unexpired term on an accelerated basis.

Section 1.2:

Contractor agrees to the City’s right to inspect and reject Contractor’s Work. If any Work is rejected, Contractor must be allowed a reasonable time, upon receipt of prior written notice, in order to remedy the deficiency.

Section 1.3, Section 9.10, Section 9.19:

Subject to the provisions of this Acknowledgment regarding price adjustments, the Work is to be performed for a fixed price at the amount indicated in the Contract. Contractor shall be entitled to an equitable adjustment in price and/or time for performance, as applicable, for changes in scope of work, or compression, acceleration, delay or inefficiency outside of Contractor’s control. If Contractor is directed by City to furnish any labor, service, or material that is outside of the mutually agreed upon scope of Work of the Contract (“Out of Scope Work”), Contractor may, at its discretion, agree to perform such Out of Scope Work (1) subject to receipt of a written notice to proceed prior to commencement of any such Out of Scope Work; and (2) contingent upon receipt of a mutually

Attachment 1 to Exhibit A

agreed upon and executed change order within thirty (30) calendar days of such written notice to proceed. In such instances where Contractor agrees to perform such Out of Scope Work, if the parties are unable to agree to terms that lead to the issuance of a mutually agreed upon and executed change order within such thirty (30) day period, Contractor may suspend the Out of Scope Work, without default or penalty to Contractor and Contractor reserves the right to seek reasonable compensation for any such Out of Scope Work performed but not paid. Contractor shall not be liable for any project delay or damage, including but not limited to liquidated or consequential damages, associated with a delay in the issuance of a mutually agreed upon and executed change order.

Section 1.4; and Exhibit B:

All schedules, start dates, completion dates, durations and schedule revisions shall be agreed to in writing by both parties before becoming effective.

Section 1.5, Section 1.6:

Contractor's warranty only covers defective material and workmanship for a period that shall not extend longer than one (1) year from the date of completion of each elevator or escalator equipment or acceptance thereof by beneficial use, whichever is the earlier, of each elevator or escalator equipment. Contractor's duty and City's remedy under this warranty are limited to Contractor correcting a covered defect that City reports to Contractor within the warranty period which, at Contractor's option, Contractor will repair or replace, provided all payments due under the terms of the Contract have been made in full. This warranty excludes ordinary wear and tear and any damage due to Causes Beyond Contractor's Reasonable Control. Warranty work will be completed during the local Contractor office's regular business hours and excludes local area Union holidays. Should any warranty work be performed outside of these regular business hours, the City will be responsible for the premium portion of labor at Contractor's standard service billing rates. THIS EXPRESS WARRANTY IS EXCLUSIVE AND IN LIEU OF ALL WARRANTIES, EXPRESS OR IMPLIED, INCLUDING ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

Section 1.6, Section 3.5:

Contractor does not assume any liability or responsibility for loss or damage to its Work nor to any property, equipment or materials that is caused by the City or anyone for whom the City is responsible.

Section 2, Section 4.3; and Exhibit C:

- a) A down payment of 50% is required at the execution of the Contract. The balance shall be paid on completion if the Work is completed within a thirty-day period. If the Work is not completed within a thirty-day period, monthly progress payments shall include the value of the Work performed and materials stored on or off site through the end of the particular month less a 5% retainage and the aggregate of previous payments. The retainage shall be paid when the Work is completed.
- b) Contractor does not agree to paid-when-paid, paid-if-paid, nor greater than net 30 payment terms.
- c) Contractor's Proposal is based on a delivery date of XXXXXX. If the delivery date is delayed ninety (90) calendar days or greater, City agrees to pay applicable factory material, logistical, and/or transportation price increases. A fully executed change order and full payment of the price increase, in addition to full payment of the required down payment by City is required prior to the factory material being ordered and released. Additionally, if your project schedule changes and extends installation or completion of labor into a future year or year(s), City agrees to pay applicable labor escalation price increases. A fully executed change order regarding the labor escalation price increase must be executed prior to mobilization and the start of any Work.
- d) The purchase price in the Contract is subject to increase in the event of commodity, fuel, and/or shipping transportation costs increases.
- e) Any payment not made when due shall be subject to interest at the rate of one and one-half percent (1.5%) per month or the maximum permitted by law, whichever is less, plus reasonable attorney's fees and collection costs. Contractor reserves the right to discontinue the Work at any time until payments shall have been made as agreed and Contractor has assurance satisfactory to it that subsequent payments will be made when due.
- f) Contractor agrees to provide lien waivers on Contractor's standard forms with respect to work or material for which Contractor has been paid for in full.

Section 3.1 – Waiver of Claims:

Contractor does not agree to waive any such claims.

Section 3.1 – Lien:

Contractor agrees to provide lien waivers with respect to material or work for which we have been paid in full, not for any unpaid work or material.

Section 3.1 – Back Charge, Section 9.3:

No Backcharges will be accepted by Contractor without the prior written approval of an authorized representative of Contractor.

Section 3.4:

Contractor agrees to abide by City's safety policy as long as said policy is not in conflict with Contractor's safety policy(ies) or Contractor's agreement with the International Union of Elevator Constructors (IUEC).

Attachment 1 to Exhibit A

City agrees to provide Contractor with unrestricted ready and safe access to all areas in which any Work is performed and to keep all work areas free of excessive debris, waste, or hazardous materials. Further, City shall prohibit others from interfering with the Work.

Section 4:

Notwithstanding anything to the contrary, Contractor agrees to indemnify City for loss, damage, or penalty (collectively "Damage") to the extent such Damage is solely caused by Contractor's negligence, willful misconduct, or material breach of the Contract, but not to the extent caused by others. Contractor's duty to indemnify does not include a duty to defend during the pendency of any claim or action as both parties shall defend themselves during the pendency of any claim or action.

Section 4.2 – Arbitration:

Contractor agrees to submit to non-binding arbitration by the American Arbitration Association but does not waive its rights to pursue other remedies available at law or in equity.

Section 4.2 – Mediation:

In the event any disputes arise in connection with the performance of any obligation under the Contract, Contractor agrees to consult and consider the use of mediation or other form of alternative dispute resolution prior to resorting to litigation.

Section 4.4:

City agrees to immediately notify Contractor if City is aware or becomes aware of the existence of asbestos or other hazardous material in any place where Contractor's personnel are or may be required to perform services. In the event it should become necessary to abate, encapsulate or remove asbestos or other hazardous material, City agrees to be responsible for such abatement, encapsulation or removal, and any governmental reporting, and in such event Contractor shall be entitled to (i) delay its Work until it is determined to Contractor's satisfaction that no hazard exists and (ii) compensation for delays encountered.

Section 5.1:

Contractor does not agree to any inspection, audit, or copy of any of Contractor's confidential, proprietary, or trade secret information, data, or documents including, without limitation, financials.

Section 5.2:

Contractor shall exclusively own all intellectual property rights, title, and interest in (i) all Contractor's goods, services, and software, as well as any and all intellectual property conceived and/or developed by Contractor in the course of its Work for City. The City agrees to keep any Contractor software resident in the Contractor's goods or services in confidence as a trade secret for Contractor and will not permit others to examine, copy, disclose, disassemble, modify, or reverse engineer Contractor's equipment, services or software for any purpose whatsoever. Contractor hereby grants to City a limited, non-exclusive right and license to use Contractor's intellectual property as embodied in Contractor's goods, services, and software exclusively in connection with and at the physical location where such goods, services, or software are delivered under the Contract. Use of such software for any other purpose is prohibited. Work for Hire provision(s), if any, shall apply only to the extent the information, services, goods, or other items referenced in such provision(s) are specifically developed by Contractor solely for City's exclusive use only (and no other customer of Contractor) and City was expressly contemplated to be the exclusive owner of such information under a separate written agreement. Contractor will supply an owner's manual with instructions on how to operate and maintain the equipment. Contractor will not supply any additional information such as internal, confidential, or proprietary information of Contractor including internal manuals, manufacturing drawings, or source code.

Any counters, meters, tools, remote monitoring devices, communication devices, resident software or other service equipment ("Contractor Peripherals") which Contractor may use or install to deliver service under the Contract remains Contractor's property, solely for the use of Contractor's employees. Contractor Peripherals are not considered as part of the equipment. If the Contract is terminated for any reason, Contractor shall be given access to the premises to remove the Contractor Peripherals at Contractor's expense. Contractor shall only be required to follow its own cyber security policies and procedures.

Section 6; and Exhibit F:

Notwithstanding anything to the contrary, Contractor will supply an insurance certificate evidencing the insurance carried by Contractor conditioned on the understanding that it represents full compliance with all insurance requirements applying to Contractor for the Work on this project. Contractor does not provide copies of its insurance policies nor declaration pages, certified or otherwise, does not waive subrogation, and does not add others as additional insured. All limits and values related to coverage if any is provided to City shall be actual values without qualifying language such as "at least", "not less than", "no less than", "minimum" or the like. Coverage, if any, will be on an occurrence basis. Coverage limits may be achieved through a combination of underlying and excess policies. Umbrella limits, if any, will be on a stand-alone, not follow-form basis. Renewal certificates will be provided during the term of the Contract. In lieu of adding parties as additional insured, such parties shall be named insured on an Owner's and Contractor's Protective (OCP) Liability policy with a limit of \$2,000,000.

City shall maintain "Builder's Risk" insurance upon the full value of our Work and material delivered to the job site, at no cost to Contractor.

Attachment 1 to Exhibit A

If the project is covered by an Owner/Contractor Controlled Insurance Program (“CIP”), Contractor agrees to participate provided it is at no cost to Contractor and subject to Contractor’s review and express acceptance of the proposed program. Any CIP requirement which violates or is counter to the intent of any condition found in any of Contractor’s labor agreement(s) is immediately void and unenforceable. In the event Contractor enrolls in any CIP program, the OCP is waived and Contractor will *add* (not name) others as Additional Insured for off-site operations only. Policies, Declaration Pages, and any rating information related to Contractor’s liability insurance has been deemed proprietary and will not be shared with third parties. Contractor does not allow credits, deducts, deductibles or the reduction of its goods and services in exchange for participation. Contractor does not provide professional liability coverage.

Section 7:

Contractor will provide surety bond(s) in the form provided by Contractor’s surety at no cost to Contractor, if required. This is in lieu of participation in any type of surety wrap-up or Subguard program.

Section 9.1:

Neither party may assign the Contract, without the prior written consent of the other party, which will not be unreasonably withheld.

Section 9.2, Section 9.4:

Contractor shall not be liable for any loss, damage or delay nor be found to be in default or breach due to any cause beyond it’s reasonable control including, but not limited to, acts of God or nature; fire; explosion; theft; floods; water; weather; traffic conditions; transportation, material or labor disruptions; epidemic, pandemic, quarantine or other local, state, or federal government action in response thereto; sabotage; cyber-security; national emergency; act of terrorism; earthquake; riot; civil commotion; war; vandalism; national or local labor strikes, lockouts, other labor disputes; misuse, abuse, neglect, mischief, or work by others (collectively “Causes Beyond Contractor’s Reasonable Control”). Contractor shall be allowed a reasonable amount of additional time for the performance of the Work due to Causes Beyond Contractor’s Reasonable Control. Contractor’s ability to maintain scheduled job progress is further conditioned upon the timely furnishing to Contractor by City of completed and code compliant hoistway(s) (wellways) and machine rooms, necessary approvals and power of proper characteristics for Contractor’s uninterrupted use.

Section 9.3:

Under no circumstances shall either party be liable for special, indirect, consequential or liquidated damages of any kind including, but not limited to, loss of goodwill, loss of business opportunity, additional financing costs or loss of use of any equipment or property. This limitation of liability also applies to indemnity of third-party claims.

Section 9.5:

Contractor will provide union labor with the full expectation that they will work in harmony with others. To effect this, Subcontractor agrees to provide sufficient workers, equipment and materials for prompt and diligent prosecution of the Work. Notwithstanding any language to the contrary, a work stoppage, whether caused by strikes, lockouts or other labor disputes, shall not constitute a breach of contract or an event of default.

Exhibit C:

Contractor does not agree to provide any such discounts.

IN GENERAL

OVERTIME

Should Contractor agree to work overtime, City agrees to pay Contractor overtime premium wages.

STORAGE

City will provide suitable and safe storage areas, adjacent to the elevator shafts or escalator areas, for material and equipment during the course of the Work. Added costs to Contractor resulting from off-site storage or relocation of the storage facilities at City’s request shall be reimbursed by City.

BARRICADES

City shall be responsible to erect/maintain all barricades at all of Contractor’s elevator hoistway locations throughout the job site in strict conformance with good safety practices, the Code of Federal Regulations as governed by the Occupational Safety Health Act, and any other applicable regulations.

INSPECTION COST

Contractor agrees to pay for the cost of one inspection after completion of the Work. Should additional inspections be necessary for causes not attributable to Contractor, City agrees to pay for said inspections.

CUTTING & PATCHING

Contractor’s acceptance is conditioned on the understanding that others shall furnish at their cost the cutting and patching of walls, floors or structural portions of the building.

Attachment 1 to Exhibit A

TOOLS

City shall not have the right to take possession of Contractor's tools, machinery or equipment unless City has paid in full for such materials and Contractor has expressly agreed to the sale of such materials in writing.

WC IMMUNITY

Contractor does not waive its rights to immunity under worker's compensation, disability or employee benefits acts or laws.

TITLE AND RESERVATION OF RIGHTS

Title to each elevator or escalator equipment as applicable shall pass to City when final payment for such equipment is received. Contractor shall retain a security interest in all material furnished hereunder and not paid for in full. City agrees that a copy of the Contract may be used as a financing statement for the purpose of placing upon public record Contractor's interest hereunder in the material and City agrees to execute a UCC-1 form or any other document reasonably requested by Contractor for that purpose. Contractor reserves the right to discontinue the Work at any time or to withhold the release of completed elevator or escalator equipment until all overdue payments, with interest, shall have been made as agreed herein. Nothing shall serve to void or reduce Contractor's entitlement to payment for Work properly performed or material suitably stored.

CONFIDENTIALITY

To the extent that a party receives ("Receiving Party") any non-public data, information and other materials from the other party ("Disclosing Party") that is disclosed pursuant to the Contract (hereinafter "Confidential Information"), the Receiving Party shall not with respect to such Confidential Information (1) disclose the Confidential Information to any third party, (2) use the Confidential Information for its own benefit, or (3) use the Confidential Information for the benefit of others. Each party shall safeguard any Confidential Information received pursuant to the Contract using at least the level of care that it uses to protect its own confidential information, but in no case shall it use less than reasonable care. Neither party shall have an obligation of confidentiality with respect to any Confidential Information which: (i) was already known to the Receiving Party prior to acquisition from, or disclosure by the Disclosing Party; (ii) is received without restriction as to disclosure by Receiving Party from a third party having the right to disclose it; (iii) is approved for release by written authorization from the Disclosing Party; or (iv) is or becomes publicly known without fault of the Receiving Party. The Disclosing Party may at its sole discretion request the return and/or deletion of any Confidential Information provided to the Receiving Party, and the Receiving Party shall immediately delete and/or return such Confidential Information and certify in writing its compliance with the request. The Receiving Party shall not reverse engineer, reverse assemble, or decompile Confidential Information. Confidential Information may be disclosed to (i) contract workers, consultants and agents of the Receiving Party or (ii) the owner of the subject equipment at the subject premises who have a need to know for the benefit of Contractor and who have executed agreements with the Receiving Party obligating them to treat such information in a manner consistent with the terms of the Contract.

BACKGROUND CHECKS AND TESTS

Contractor supports City's efforts to maintain a safe and productive work environment; however, Contractor's collective bargaining agreement with the IUEC prohibits Contractor from completing background checks, searches, or tests on Contractor employees in the IUEC bargaining unit. Therefore, Contractor cannot agree to authorize any party to complete criminal background checks, searches, or tests on any Contractor employees. Contractor will request IUEC represented employees furnishing Work for City to agree to voluntarily submit to a criminal background check and agrees not to staff with employees who do not consent to same to the extent that City requires background checks. City agrees to pay any and all costs associated with obtaining criminal background checks conducted. Subject to the forgoing, Contractor will take appropriate action in the event that City advises Contractor of any action by any of our employees that is contrary to the maintenance of a safe, healthy and productive workplace.

BUY AMERICAN

The equipment that Contractor will provide under the Contract is produced from components procured from a variety of sources located throughout the world. Therefore, Contractor cannot confirm compliance with the Buy American Act (or applicable Domestic Sourcing Act). However, these components are selected or designed to meet applicable U.S. standards.

COMMERCIAL ITEMS CLARIFICATION

The components, equipment and services proposed by Contractor are commercial items as defined by the Federal Acquisition Regulations ("FAR") and the prices in any resulting contract and in any change proposal are based on Contractor's standard commercial accounting policies and practices which do not consider any special requirements of the government cost principles and do not meet the requirement of Part 31 of the FAR. Contractor agrees only to perform a contract for the sale of a commercial item on a fixed price basis. In addition, Contractor will not agree to submit or certify to any cost pricing data nor does Contractor agree to any requirements to establish price reasonableness under FAR Part 15 or to meet any Cost Accounting Standards. In stating its position, Contractor refers to FAR Part 12- "Acquisition of Commercial Items." In addition, no federal government procurement regulations, such as FARs or DFARs, shall apply to the Contract except those regulations expressly accepted in writing by Contractor.

MINORITY/WOMEN/DISABLED VETERAN-OWNED BUSINESS ENTERPRISE

The materials and components that comprise Contractor's products are procured from a variety of sources located throughout the world, which allows Contractor to provide its customers with high quality equipment at competitive prices, but limits Contractor's ability to

Attachment 1 to Exhibit A

meet certain percentages of M/W/DBE set aside goals. Contractor is committed to achieving diversity within Contractor's workforce and in Contractor's supply base, however, Contractor cannot commit to specific set aside targets in the Contract.

THIRD PARTIES

Contractor is not obligated to contract with any 3rd party vendors (e.g. insurance compliance vendors, payment processing vendors, etc.), or to comply with or execute any 3rd party vendor forms, terms and conditions, or agreements regarding City's vertical transportation equipment or Contractor's performance under the Contract. While Contractor is not obligated, to the extent that Contractor works with any such 3rd party vendor, it will be for administrative purposes only and any costs associated will be passed through to City. In the event of any conflict, ambiguity, or inconsistency between the terms and conditions of the Contract and any 3rd party vendor agreement, form, or terms and conditions, the Contract shall prevail.

TAX STATUS

If Contractor's quoted price is based, in part, on City's tax exemption status, but City fails to furnish a valid tax exemption certificate to Contractor or such tax exemption status is either inapplicable, invalid, incorrect, or otherwise not accepted by the appropriate taxing authority, then City agrees the quoted price shall be increased to be inclusive of the required tax amount.

UNION:

Contractor has a contract with the International Union of Elevator Constructors (IUEC) and therefore cannot agree to be bound by any provision that modifies or conflicts with the union labor agreement.

COVID VACCINE MANDATES

Contractor will not accept any Covid vaccine mandates unless Contractor is given the opportunity to review the requirements and can assure Contractor can fully comply. Non acceptance of any Covid vaccine mandates by Contractor will not be cause for breach of contract or any other cause of action (damages, penalties or otherwise).

LEED:

Contractor will make good faith efforts to satisfy LEED requirements, if any, but cannot guarantee compliance with any specific requirements or status certification.

EXHIBIT "B"

SCHEDULE OF PERFORMANCE

Twelve (12) weeks lead time from when contractor receives approval from City and down payment. For construction, scheduled to begin approximately middle of March with each elevator car to take approximately 5 weeks, and occur consecutively, not concurrently.

EXHIBIT "C"
COMPENSATION

City shall pay contractor total compensation for the completion of work in the amount of \$267,600.69 to include sales tax and a 3% pre-payment discount.

EXHIBIT "D"

REPRESENTATIVES

CITY'S REPRESENTATIVE

City of Cathedral City
Facilities
Attn: Edward Moore
68-700 Avenida Lalo Guerrero
Cathedral City, California 92234
Phone: (760) 770-0390
Fax: (760) 328-8622
Email Address: Emoore@cathedralcity.gov

CONTRACTOR'S REPRESENTATIVE

OTIS Elevator Company
Attn: Brian Kegler
4949 Viewridge Avenue
San Diego, CA 92123

EXHIBIT "E"
BONDS REQUIRED

No Bonds Required

EXHIBIT "F"

INSURANCE REQUIREMENTS FOR CITY OF CATHEDRAL CITY

The City requires a certificate of insurance, including an underwriter's endorsement, prior to commencement of the Services.

The insurance policies are to include additional endorsements that contain the following provisions:

1. That the City of Cathedral City and its respective elected officials, officers, employees, agents and representatives are additional insureds under the policy;
2. The policies are primary and non-contributory to any insurance that may be carried by City;
3. The City is entitled to thirty (30) days' prior written notice of cancellation, material reduction, or non-renewal of the policy or policies.
4. The insurance shall be carried only by responsible insurance companies that have rated "A-" and "V" or better by the A.M. Best Key Rating Guide, that are licensed to do business in the State of California. City will accept insurance provided by non-admitted "surplus lines" carriers only if the carrier is authorized to do business in the State of California.

Only the following "marked" requirements are applicable:

 X **Commercial General Liability (CGL):** Insurance written on an occurrence basis to protect Contractor and City against liability or claims of liability which may arise out of this Agreement in the amount of one million dollars (\$1,000,000) per occurrence and subject to an annual aggregate of two million dollars (\$2,000,000). There shall be no endorsement or modification of the CGL limiting the scope of coverage for either insured vs. additional insured claims or contractual liability. All defense costs shall be outside the limits of the policy.

 X **Vehicle Liability Insurance:** Contractor shall also procure and shall maintain during the term of this Agreement vehicle liability insurance in an amount not less than \$1,000,000 for injuries, including accidental death, to any one person, and subject to the same minimum for each person, in an amount not less than one million dollars (\$1,000,000) for each accident, and property damage insurance in an amount of not less than one million dollars (\$1,000,000).

 X **Workers' Compensation Insurance:** For all of Contractor's employees who will provide Services under this Agreement and to the extent required by applicable state or federal law, Contractor shall keep in full force and effect a Workers'

Compensation policy that includes a minimum of one million dollars (\$1,000,000) of employers' liability coverage. Contractor shall provide an endorsement that the insurer waives the right of subrogation against the City and its respective elected officials, officers, employees, agents and representatives. In the event a claim under the provisions of the California Workers' Compensation Act is filed against City by a bona fide employee of Contractor participating under this Agreement, Contractor is to defend and indemnify the City from such claim.