

File No. 180989

Committee Item No. 8
Board Item No. 20

COMMITTEE/BOARD OF SUPERVISORS AGENDA PACKET CONTENTS LIST

Committee: Budget & Finance Committee

Date November 15, 2018

Board of Supervisors Meeting

Date November 27, 2018

Cmte Board

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| <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/> | Budget and Legislative Analyst Report |
| <input type="checkbox"/> | <input type="checkbox"/> | Youth Commission Report |
| <input type="checkbox"/> | <input type="checkbox"/> | Introduction Form |
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| <input type="checkbox"/> | <input type="checkbox"/> | MOU |
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OTHER (Use back side if additional space is needed)

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Completed by: Linda Wong Date November 9, 2018
Completed by: Linda Wong Date November 19, 2018

1 [Airport Professional Services Agreement - ThyssenKrupp Elevator Corporation - Escalator
2 and Electric Walk Maintenance Services - Not to Exceed \$19,500,000]

3 **Resolution approving Modification No. 1 to Professional Services Agreement for**
4 **Airport Contract No. 9313 – Escalator and Electric Walk Maintenance Service, between**
5 **ThyssenKrupp Elevator Corporation and the City and County of San Francisco, to**
6 **increase the contract term by six months from January 1, 2019, through June 30, 2019,**
7 **and to increase the contract amount by \$2,500,000 for a new total contract amount not**
8 **to exceed \$19,500,000 pursuant to Charter, Section 9.118(b).**

9
10 WHEREAS, On October 22, 2013, pursuant to Resolution No. 13-0216, the Airport
11 Commission awarded the Professional Services Agreement (PSA) for Airport Contract 9313 –
12 Escalators and Electric Walk Maintenance Service to ThyssenKrupp Elevator Corporation for
13 a five year term, at a not to exceed amount of \$17,000,000, for maintenance, repair, testing,
14 and on-call emergency services for approximately 133 escalators and 43 electric walks at the
15 San Francisco International Airport; and

16 WHEREAS, On December 17, 2013, pursuant to Resolution No. 451-13, the Board of
17 Supervisors approved the award of the PSA to ThyssenKrupp Elevator Corporation under the
18 same terms and conditions as stated above, on file with the Clerk of the Board of Supervisors
19 in File No. 131055, which is hereby declared to be a part of this Resolution as if set forth fully
20 herein; and

21 WHEREAS, On October 2, 2018, pursuant to Resolution No. 18-0326, the Airport
22 Commission approved Modification No. 1 to Contract No. 9313 (hereafter, "Modification
23 No. 1"), to increase the contract term by six months from January 1, 2019, through June 30,
24 2019, and to increase the contract amount by \$2,500,000 for a new total contract amount not
25 to exceed \$19,500,000; and

1 WHEREAS, Charter, Section 9.118(b) provides that agreements entered into by a
2 department, board or commission requiring anticipated expenditures by the City and County
3 of \$10,000,000, or a modification to such an agreement having an impact of more than
4 \$500,000, shall be subject to approval by the Board of Supervisors by Resolution; and

5 WHEREAS, Modification No. 1 is on file with the Clerk of the Board of Supervisors in
6 File No. 180989, which is hereby declared to be a part of this Resolution as if set forth fully
7 herein; now, therefore, be it

8 RESOLVED, That the Board of Supervisors hereby approves Modification No. 1 to
9 Airport Contract No. 9313, Escalators and Electric Walk Maintenance with ThyssenKrupp
10 Elevator Corporation, to increase the contract term by six months from January 1, 2019,
11 through June 30, 2019, and to increase the contract amount by \$2,500,000 for a new total
12 contract amount not to exceed \$19,500,000; and, be it

13 FURTHER RESOLVED, That within thirty (30) days of Modification No. 1 being fully
14 executed by all parties, the Airport Commission shall provide it to the Clerk of the Board for
15 inclusion into the official file.

<p>Item 8 File 18-0989</p>	<p>Department: San Francisco International Airport (Airport)</p>
<p>EXECUTIVE SUMMARY</p>	
<p style="text-align: center;">Legislative Objectives</p> <ul style="list-style-type: none"> • The proposed resolution approves Modification No. 1 to the contract between San Francisco International Airport (Airport) and ThyssenKrupp Elevator Corporation for maintenance service of escalators and moving walks, extending the term of the contract through June 30, 2019, and increasing the not-to-exceed amount by \$2,500,000 from \$17,000,000 to \$19,500,000. <p style="text-align: center;">Key Points</p> <ul style="list-style-type: none"> • In July 2013, Airport staff conducted a Request for Proposals (RFP) for a vendor to perform service on approximately 133 escalators and 43 moving walks. ThyssenKrupp was selected as the highest scoring responsive and responsible proposer. In December 2013, the Board of Supervisors approved a contract with ThyssenKrupp for a term of five years and an amount not to exceed \$17,000,000. • The contract with ThyssenKrupp expires December 31, 2018. The Airport is currently developing an RFP for a new vendor to begin July 1, 2019. The Airport and ThyssenKrupp agreed to extend the contract until the new vendor is in place. • The proposed resolution would approve Modification No. 1 to the Airport’s contract with ThyssenKrupp, extending the contract through June 30, 2018 and increasing the not-to-exceed amount to \$19,500,000. <p style="text-align: center;">Fiscal Impact</p> <ul style="list-style-type: none"> • Contract expenditures in the five years from January 2014 to December 2018 are approximately \$16.5 million. Annual contract expenditures increased from \$2.4 million in FY 2014-15 to \$4.2 million in FY 2017-18. According to the Airport, annual costs have been increasing because escalators and moving walks in the International Terminal are reaching the end of their useful lives, resulting in more breakdowns. • Expenditures in the six-months from July 2018 to December 2018 are estimated to be \$2.6 million. The six-month contract extension estimates approximately \$400,000 per month in contract expenditures, or \$2.4 million over six months, allowing for a contingency of 4.4 percent (approximately \$100,000). Funding is available in the Airport’s FY 2018-19 operating budget. <p style="text-align: center;">Recommendation</p> <ul style="list-style-type: none"> • Approve the proposed resolution. 	

MANDATE STATEMENT

City Charter Section 9.118(b) states that any contract entered into by a department, board or commission that (1) has a term of more than ten years, (2) requires expenditures of \$10 million or more, or (3) requires a modification of more than \$500,000 is subject to Board of Supervisors approval.

BACKGROUND

In July 2013, San Francisco International Airport (Airport) staff issued a Request for Proposals (RFP) for a contract to service approximately 133 escalators and 43 moving walks. Three proposals were received, and a panel scored the proposals as shown in Table 1 below.

Table 1: Proposers and Scores from RFP

Proposer	Score
ThyssenKrupp Elevator Corporation	292.96
Kone Inc.	264.00
Schindler Elevator Corporation	260.28

ThyssenKrupp was deemed the highest scoring responsive and responsible proposer. On December 17, 2013, the Board of Supervisors approved a contract with ThyssenKrupp for a term of five years and an amount not to exceed \$17,000,000 (File 13-1055, Resolution 451-13).

The contract expires December 31, 2018. The Airport is currently developing an RFP for a new contract to begin July 1, 2019, which would align the contract with the fiscal year. The Airport has negotiated a contract amendment with ThyssenKrupp to continue escalator service through June 30, 2019. On October 2, 2018, the Airport Commission approved the contract amendment.

DETAILS OF PROPOSED LEGISLATION

The proposed resolution would approve Modification No. 1 to the Airport's escalator and electric walk maintenance service contract with ThyssenKrupp, extending the term of the contract through June 30, 2019, and increasing the not-to-exceed amount by \$2,500,000 from \$17,000,000 to \$19,500,000. According to Mr. Timothy Hatfield, Airport Mechanical Maintenance Manager, the additional \$2,500,000 will be sufficient to extend the contract through June 30, 2019.

Modification No. 1 would not make any other changes to the contract. The scope of services includes maintenance, repair, testing, and on-call emergency services for approximately 133 escalators and 43 electric walks in the Airport.

The original five-year contract between the Airport and ThyssenKrupp did not provide for an option to extend. As noted above, the Airport is requesting to extend the contract by six months to allow for an RFP process to select a new contractor as of July 1, 2019. According to Mr. Hatfield, the Airport did not issue an RFP at an earlier date in order to select a new contractor to begin at the termination of the existing contract with ThyssenKrupp on December

31, 2018 because Airport staff wanted to align the new contract with the fiscal year. Aligning the contract with the fiscal year makes contract administration more manageable for the Airport staff.

FISCAL IMPACT

The proposed resolution would increase the not-to-exceed amount of the contract by \$2,500,000. According to Mr. Hatfield, the Airport has spent or encumbered \$16,525,459 of the original \$17,000,000 amount. The annual amounts spent are show in Table 2 below.

Table 2: Annual Amounts Spent by Airport

Year	Amount
FY 2013-14 (January-June 2014)	\$1,176,839
FY 2014-15	2,407,422
FY 2015-16	2,877,678
FY 2016-17	3,256,871
FY 2017-18	4,241,181
FY 2018-19 (July – December 2018)	2,565,467
Total	\$16,525,459

*Totals may not add due to rounding

According to Mr. Hatfield, annual costs have been increasing because escalators and moving walks in the International Terminal are reaching the end of their useful lives, resulting in more breakdowns. Many of the parts are no longer produced and have to be replaced with custom-made parts. The Airport has also had an overall increase in passenger traffic, causing additional wear and tear. Additional overtime costs have been needed to repair broken units as quickly as possible.

According to Mr. Hatfield, the \$2,500,000 increase in the contract is expected to be sufficient to cover expenses through June 30, 2019. Anticipated invoices total \$399,000 per month, comprised of \$340,000 for labor and \$59,000 for parts. A contingency of approximately 4.4 percent is included for unanticipated costs. According to Mr. Hatfield, funding is available in the FY 2018-19 operating budget.

RECOMMENDATION

Approve the proposed resolution.

City and County of San Francisco
Airport Commission
P.O. Box 8097
San Francisco, California 94128

Modification No. 1

THIS MODIFICATION (this "Modification") is made as of October 2, 2018, in San Francisco, California, by and between **ThyssenKrupp Elevator Company** ("Contractor"), and the City and County of San Francisco, a municipal corporation ("City"), acting by and through its Airport Commission, hereinafter referred to as "**Commission**."

RECITALS

WHEREAS, City and Contractor have entered into the Agreement (as defined below); and

WHEREAS, on October 22, 2013, by Resolution No. 13-0216, the Commission awarded this Agreement to the Contractor for a five (5) year term in an amount not to exceed \$17,000,000; and

WHEREAS, on December 17, 2013, by Resolution No. 451-13, the Board of Supervisors approved the Agreement under San Francisco Charter Section 9.118(b); and

WHEREAS, City and Contractor desire to modify the Agreement on the terms and conditions set forth herein to extend the performance period, increase the contract amount, and update standard contractual clauses; and

WHEREAS, on October 2, 2018, by Resolution No. 18-0326, the Commission approved this Modification to the Agreement to extend the term of the contract for six (6) months and to increase the not-to-exceed amount to \$19,500,000; and

WHEREAS, on _____, by Resolution No. _____, the Board of Supervisors approved this Modification to the Agreement under San Francisco Charter Section 9.118(b); and

WHEREAS, approval for this Agreement was obtained when the Civil Service Commission approved PSC No. 4013-13/14 on July 18, 2018; and

NOW, THEREFORE, Contractor and the City agree as follows:

1. **Definitions.** The following definitions shall apply to this Modification:

a. **Agreement.** The term "Agreement" shall mean the Agreement dated October 15, 2013 between Contractor and City.

b. **Other Terms.** Terms used and not defined in this Modification shall have the meanings assigned to such terms in the Agreement.

2. **Section 2. Term of the Agreement** is hereby amended to extend the term of the contract for an additional six (6) months for a new ending date of June 30, 2019.

3. **Section 5. Compensation** is hereby amended to increase the total compensation payable by an amount not to exceed \$2,500,000 for a new total not-to-exceed amount of \$19,500,000.

4. **New Section 32. Earned Income Credit (EIC) Forms** is hereby replaced in its entirety with a **New Section 32. Consideration of Criminal History in Hiring and Employment Decisions** to read as follows:

32. Consideration of Criminal History in Hiring and Employment Decisions.

a. Contractor agrees to comply fully with and be bound by all of the provisions of Chapter 12T "City Contractor/Subcontractor Consideration of Criminal History in Hiring and Employment Decisions," of the San Francisco Administrative Code (Chapter 12T), including the remedies provided, and implementing regulations, as may be amended from time to time. The provisions of Chapter 12T are incorporated by reference and made a part of this Agreement as though fully set forth herein. The text of the Chapter 12T is available on the web at www.sfgov.org/olse/fco. A partial listing of some of Contractor's obligations under Chapter 12T is set forth in this Section. Contractor is required to comply with all of the applicable provisions of 12T, irrespective of the listing of obligations in this Section. Capitalized terms used in this Section and not defined in this Agreement shall have the meanings assigned to such terms in Chapter 12T.

b. The requirements of Chapter 12T shall only apply to the Contractor's or Subcontractor's operations to the extent those operations are in furtherance of the performance of this Agreement, and shall apply only to applicants and employees who would be or are performing work in furtherance of this Agreement, whose employment is or would be in whole or in substantial part physically located in the City and County of San Francisco, which excludes Airport property.

1) Applicants or employees who would be or are performing work in furtherance of this Agreement may be required to be screened by the U.S. Department of Homeland Security for security badging. A rejection by the U.S. Department of Homeland Security of an applicant's or employee's security badging application, and the resulting inability of the Contractor to hire the applicant or assign the employee to perform services under this Agreement, shall not be considered an Adverse Action under Chapter 12T.

c. Contractor shall incorporate by reference in all subcontracts the provisions of Chapter 12T, and shall require all subcontractors to comply with such provisions. Contractor's failure to comply with the obligations in this subsection shall constitute a material breach of this Agreement.

d. Contractor or Subcontractor shall not inquire about, require disclosure of, or if such information is received, base an Adverse Action on an applicant's or potential applicant for employment or employee's: (1) Arrest not leading to a Conviction, unless the Arrest is undergoing an active pending criminal investigation or trial that has not yet been resolved; (2) participation in or completion of a diversion or a deferral of judgment program; (3) a Conviction that has been judicially dismissed, expunged, voided, invalidated, or otherwise rendered inoperative; (4) a Conviction or any other adjudication in the juvenile justice system; (5) a Conviction that is more than seven years old, from the date of sentencing; or (6) information pertaining to an offense other than a felony or misdemeanor, such as an infraction.

e. Contractor or Subcontractor shall not inquire about or require applicants, potential applicants for employment, or employees to disclose on any employment application the facts or

details of any conviction history, unresolved arrest, or any matter identified in subsection 32.4, above. Contractor or Subcontractor shall not require such disclosure or make such inquiry until either after the first live interview with the person, or after a conditional offer of employment.

f. Contractor or Subcontractor shall state in all solicitations or advertisements for employees that are reasonably likely to reach persons who are reasonably likely to seek employment to be performed under this Agreement, that the Contractor or Subcontractor will consider for employment qualified applicants with criminal histories in a manner consistent with the requirements of Chapter 12T.

g. Contractor and Subcontractors shall post the notice prepared by the Office of Labor Standards Enforcement (OLSE), available on OLSE's website, in a conspicuous place at every workplace, job site, or other location under the Contractor or Subcontractor's control at which work is being done or will be done in furtherance of the performance of this Agreement. The notice shall be posted in English, Spanish, Chinese, and any language spoken by at least 5% of the employees at the workplace, job site, or other location at which it is posted.

h. Contractor understands and agrees that if it fails to comply with the requirements of Chapter 12T, the City shall have the right to pursue any rights or remedies available under Chapter 12T, including but not limited to, a penalty of \$50 for a second violation and \$100 for a subsequent violation for each employee, applicant or other person as to whom a violation occurred or continued, termination or suspension in whole or in part of this Agreement.

5. **New Section 58. Graffiti Removal** is hereby replaced in its entirety with a **New Section 58. Sugar-Sweetened Beverage Prohibition** to read as follows:

58. Sugar-Sweetened Beverage Prohibition. Contractor agrees that it will not sell, provide, or otherwise distribute Sugar-Sweetened Beverages, as defined by San Francisco Administrative Code Chapter 101, as part of its performance of this Agreement.

6. **New Section 69. Airport Commission Rules and Regulations** is added to the Agreement to read as follows:

69. Airport Commission Rules and Regulations. Contractor agrees to comply with the Airport Commission's Rules and Regulations for the San Francisco International Airport as amended from time to time. A copy of the current Rules and Regulations can be found at: <http://www.flysfo.com/about-sfo/the-organization/rules-and-regulations>.

7. **New Section 70. Federal Fair Labor Standards Act** is added to the Agreement to read as follows:

70. Federal Fair Labor Standards Act. This Agreement incorporates by reference the provisions of 29 USC §201, the Federal Fair Labor Standards Act (FLSA), with the same force and effect as if given in full text. The FLSA sets minimum wage, overtime pay, recordkeeping, and child labor standards for full and part time workers. Contractor has full responsibility to monitor compliance to the referenced statute or regulation. Contractor must address any claims or disputes that arise from this requirement directly with the U.S. Department of Labor – Wage and Hour Division.

8. **New Section 71. Occupational Safety and Health Act of 1970** is added to the Agreement to read as follows:

71. **Occupational Safety and Health Act of 1970.** This Agreement incorporates by reference the requirements of 29 CFR §1910 with the same force and effect as if given in full text. Contractor must provide a work environment that is free from recognized hazards that may cause death or serious physical harm to the employee. Contractor retains full responsibility to monitor its compliance and their subcontractor's compliance with the applicable requirements of the Occupational Safety and Health Act of 1970 (29 CFR §1910). Contractor must address any claims or disputes that pertain to a referenced requirement directly with the U.S. Department of Labor – Occupational Safety and Health Administration.

9. **New Section 72. Federal Nondiscrimination Requirements** is added to the Agreement to read as follows:

72. **Federal Nondiscrimination Requirements.** During the performance of this Agreement, Contractor, for itself, its assignees, and successors in interest (hereinafter referred to as "Contractor") agrees as follows:

a. **Compliance with Regulations.** Contractor (hereinafter includes consultants) will comply with the Title VI List of Pertinent Nondiscrimination Acts And Authorities, as they may be amended from time to time, which are herein incorporated by reference and made a part of this Agreement.

b. **Nondiscrimination.** Contractor, with regard to the work performed by it during the Agreement, will not discriminate on the grounds of race, color, or national origin in the selection and retention of subcontractors, including procurements of materials and leases of equipment. Contractor will not participate directly or indirectly in the discrimination prohibited by the Nondiscrimination Acts and Authorities, including employment practices when the Agreement covers any activity, project, or program set forth in Appendix B of 49 CFR §21.

c. **Solicitations for Subcontracts.** Including Procurements of Materials and Equipment: In all solicitations, either by competitive bidding, or negotiation made by Contractor for work to be performed under a subcontract, including procurements of materials, or leases of equipment, each potential subcontractor or supplier will be notified by Contractor of Contractor's obligations under this Agreement and the Nondiscrimination Acts And Authorities on the grounds of race, color, or national origin.

d. **Information and Reports.** Contractor will provide all information and reports required by the Acts, the Regulations, and directives issued pursuant thereto and will permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the Airport or the Federal Aviation Administration to be pertinent to ascertain compliance with such Nondiscrimination Acts and Authorities and instructions. Where any information required of a contractor is in the exclusive possession of another who fails or refuses to furnish the information, the contractor will so certify to the Airport or the Federal Aviation Administration, as appropriate, and will set forth what efforts it has made to obtain the information.

e. **Sanctions for Noncompliance.** In the event of a contractor's noncompliance with the Non-discrimination provisions of this Agreement, the Airport will impose such contract sanctions as it or the Federal Aviation Administration may determine to be appropriate, including, but not limited to:

1) Withholding payments to the contractor under the contract until the contractor complies; and/or

2) Cancelling, terminating, or suspending a contract, in whole or in part.

f. Incorporation of Provisions. Contractor will include the provisions of paragraphs 12.6.1 through 12.6.6 in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Acts, the Regulations and directives issued pursuant thereto. Contractor will take action with respect to any subcontract or procurement as the Airport or the Federal Aviation Administration may direct as a means of enforcing such provisions including sanctions for noncompliance. Provided, that if Contractor becomes involved in, or is threatened with litigation by a subcontractor, or supplier because of such direction, Contractor may request the Airport to enter into any litigation to protect the interests of the Airport. In addition, Contractor may request the United States to enter into the litigation to protect the interests of the United States.

g. Title VI List of Pertinent Nondiscrimination Acts and Authorities. During the performance of this Agreement, Contractor, for itself, its assignees, and successors in interest (hereinafter referred to as the "Contractor") agrees to comply with the following non-discrimination statutes and authorities; including but not limited to:

- Title VI of the Civil Rights Act of 1964 (42 USC §2000d *et seq.*, 78 stat. 252), (prohibits discrimination on the basis of race, color, national origin);
- 49 CFR part 21 (Non-discrimination In Federally-Assisted Programs of The Department of Transportation—Effectuation of Title VI of The Civil Rights Act of 1964);
- The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, (42 USC §4601), (prohibits unfair treatment of persons displaced or whose property has been acquired because of Federal or Federal-aid programs and projects);
- Section 504 of the Rehabilitation Act of 1973, (29 USC. §794 *et seq.*), as amended, (prohibits discrimination on the basis of disability); and 49 CFR §27;
- The Age Discrimination Act of 1975, as amended, (42 USC §6101 *et seq.*), (prohibits discrimination on the basis of age);
- Airport and Airway Improvement Act of 1982, (49 USC §471, Section 47123), as amended, (prohibits discrimination based on race, creed, color, national origin, or sex);
- The Civil Rights Restoration Act of 1987, (PL 100-209), (Broadened the scope, coverage and applicability of Title VI of the Civil Rights Act of 1964, The Age Discrimination Act of 1975 and Section 504 of the Rehabilitation Act of 1973, by expanding the definition of the terms "programs or activities" to include all of the programs or activities of the Federal-aid recipients, sub-recipients and contractors, whether such programs or activities are Federally funded or not);
- Titles II and III of the Americans with Disabilities Act of 1990, which prohibit discrimination on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing entities (42 USC §12131 – 12189) as implemented by Department of Transportation regulations at 49 CFR §37 and 38 and the Department of Justice regulations at 28 CFR, parts 35 and 36;
- The Federal Aviation Administration's Non-discrimination statute (49 USC §47123) (prohibits discrimination on the basis of race, color, national origin, and sex);

- Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, which ensures non-discrimination against minority populations by discouraging programs, policies, and activities with disproportionately high and adverse human health or environmental effects on minority and low-income populations;


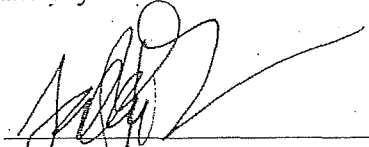
- Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency, and resulting agency guidance, national origin discrimination includes discrimination because of limited English proficiency (LEP). To ensure compliance with Title VI, you must take reasonable steps to ensure that LEP persons have meaningful access to your programs (70 CFR at 74087 to 74100);

- Title IX of the Education Amendments of 1972, as amended, which prohibits you from discriminating because of sex in education programs or activities (20 USC §1681 *et seq.*).

10. Effective Date. Each of the changes set forth in this Modification shall be effective on and after the date of this Modification.

11. Legal Effect. Except as expressly changed by this Modification, all of the terms and conditions of the Agreement shall remain unchanged and in full force and effect.

IN WITNESS WHEREOF, Contractor and City have executed this Modification as of the date first referenced above.

CITY	CONTRACTOR
AIRPORT COMMISSION CITY AND COUNTY OF SAN FRANCISCO	
By: _____ Ivar C. Satero, Airport Director	 Authorized Signature
Attest:	Josh Fosson Printed Name
By _____ C. Corina Monzón, Secretary Airport Commission	San Francisco Branch manager Title
Resolution No: 18-0326	ThyssenKrupp Elevator Company Name
Adopted on: October 2, 2018	06675 City Supplier ID
Approved as to Form:	292 Lawrence Ave. Address
Dennis J. Herrera City Attorney	SSF, CA 94080 City, State, ZIP
 By _____ Sallie Gibson Deputy City Attorney	415-544-8150 Telephone Number
	62-1211267 Federal Employer ID Number

RECEIVED
ACCOUNTING

City and County of San Francisco
Airport Commission
P.O. Box 8097
San Francisco, California 94128

2014 JAN -2 AM 8:39

Agreement between the City and County of San Francisco and
ThyssenKrupp Elevator America

Contract No. 9313

This Agreement is made this 15th day of October, 2013, in the City and County of San Francisco, State of California, by and between: **ThyssenKrupp Elevator America, 520 Townsend, San Francisco, CA 94103**, hereinafter referred to as "Contractor," and the City and County of San Francisco, a municipal corporation, hereinafter referred to as "City," acting by and through its Airport Commission or the Commission's designated agent, hereinafter referred to as "Commission."

Recitals

WHEREAS, the Commission wishes to provide for the maintenance, repair, and on-call service to approximately 134 escalators and 43 electric walks at the Airport; and,

WHEREAS, Commission is authorized to enter into all contracts which relate to matters under its jurisdiction; and

WHEREAS, a Request for Proposal ("RFP") was issued on July 24, 2013, and City selected Contractor as the highest qualified scorer pursuant to the RFP; and

WHEREAS, Commission awarded this contract to Contractor on October 22, 2013, pursuant to Resolution No. 13-0216; and

WHEREAS, pursuant to San Francisco Charter Section 9.118, the Board of Supervisors by its Resolution No. 0451-13, adopted December 17, 2013, approved the contract to Consultant; and

WHEREAS, approval for this Agreement was obtained when the Civil Service Commission approved Contract number PSC 4013-13/14 on August 19, 2013; and

WHEREAS, Contractor represents and warrants that it is qualified to perform the services required by City as set forth under this Contract;

Now, THEREFORE, the parties agree as follows:

1. Certification of Funds; Budget and Fiscal Provisions; Termination in the Event of Non-Appropriation. This Agreement is subject to the budget and fiscal provisions of the City's Charter. Charges will accrue only after prior written authorization certified by the Controller, and the amount of City's obligation hereunder shall not at any time exceed the amount certified for the purpose and period stated in such advance authorization. This Agreement will terminate without penalty, liability or expense of any kind to City at the end of any fiscal year if funds are not appropriated for the next succeeding fiscal year. If funds are appropriated for a portion of the fiscal year, this Agreement will terminate, without

penalty, liability or expense of any kind at the end of the term for which funds are appropriated. City has no obligation to make appropriations for this Agreement in lieu of appropriations for new or other agreements. City budget decisions are subject to the discretion of the Mayor and the Board of Supervisors. Contractor's assumption of risk of possible non-appropriation is part of the consideration for this Agreement.

THIS SECTION CONTROLS AGAINST ANY AND ALL OTHER PROVISIONS OF THIS AGREEMENT.

- 2. Term of the Agreement.** Subject to Section 1, the term of this Agreement shall be from January 1, 2014 to December 31, 2018.
- 3. Effective Date of Agreement.** This Agreement shall become effective when the Controller has certified to the availability of funds and Contractor has been notified in writing.
- 4. Services Contractor Agrees to Perform.** The Contractor agrees to perform the services provided for in Appendix A, "Services to be Provided by Contractor," attached hereto and incorporated by reference as though fully set forth herein. If Appendix A includes as-needed services, such services shall be requested by City through the issuance of a written work order signed by City and Contractor that shall be made a part of and incorporated into the Agreement as though fully set forth herein without the need for a formal amendment to the Agreement. The work order shall include a description of the as-needed services, the deliverables, schedule for performance, cost, and method and timing of payment.
- 5. Compensation.** Compensation shall be made in monthly payments on or before the first day of each month for work, as set forth in Section 4 of this Agreement, that the Airport Director, in his or her sole discretion, concludes has been performed as of the thirtieth day of the immediately preceding month. In no event shall the amount of this Agreement exceed Seventeen million dollars (\$17,000,000). The breakdown of costs associated with this Agreement appears in Appendix B, "Calculation of Charges," attached hereto and incorporated by reference as though fully set forth herein. No charges shall be incurred under this Agreement nor shall any payments become due to Contractor until reports, services, or both, required under this Agreement are received from Contractor and approved by the Commission as being in accordance with this Agreement. City may withhold payment to Contractor in any instance in which Contractor has failed or refused to satisfy any material obligation provided for under this Agreement. In no event shall City be liable for interest or late charges for any late payments.
- 6. Guaranteed Maximum Costs.** The City's obligation hereunder shall not at any time exceed the amount certified by the Controller for the purpose and period stated in such certification. Except as may be provided by laws governing emergency procedures, officers and employees of the City are not authorized to request, and the City is not required to reimburse the Contractor for, Commodities or Services beyond the agreed upon contract scope unless the changed scope is authorized by amendment and approved as required by law. Officers and employees of the City are not authorized to offer or promise, nor is the City required to honor, any offered or promised additional funding in excess of the maximum amount of funding for which the contract is certified without certification of the additional amount by the Controller. The Controller is not authorized to make payments on any contract for which funds have not been certified as available in the budget or by supplemental appropriation.
- 7. Payment; Invoice Format.** Invoices furnished by Contractor under this Agreement must be in a form acceptable to the Controller, and must include a unique invoice number. All amounts paid by City to Contractor shall be subject to audit by City. Payment shall be made by City to Contractor at the address specified in the section entitled "Notices to the Parties."

8. **Submitting False Claims; Monetary Penalties.** Pursuant to San Francisco Administrative Code §21.35, any contractor, subcontractor or consultant who submits a false claim shall be liable to the City for the statutory penalties set forth in that section. The text of Section 21.35, along with the entire San Francisco Administrative Code is available on the web at:

http://www.amlegal.com/nxt/gateway.dll?f=templates&fn=default.htm&vid=amlegal:sanfrancisco_ca. A contractor, subcontractor or consultant will be deemed to have submitted a false claim to the City if the contractor, subcontractor or consultant: (a) knowingly presents or causes to be presented to an officer or employee of the City a false claim or request for payment or approval; (b) knowingly makes, uses, or causes to be made or used a false record or statement to get a false claim paid or approved by the City; (c) conspires to defraud the City by getting a false claim allowed or paid by the City; (d) knowingly makes, uses, or causes to be made or used a false record or statement to conceal, avoid, or decrease an obligation to pay or transmit money or property to the City; or (e) is a beneficiary of an inadvertent submission of a false claim to the City, subsequently discovers the falsity of the claim, and fails to disclose the false claim to the City within a reasonable time after discovery of the false claim.

9. **Disallowance. Not applicable.**

10. **Taxes**

a. Payment of any taxes, including possessory interest taxes and California sales and use taxes, levied upon or as a result of this Agreement, or the services delivered pursuant hereto, shall be the obligation of Contractor.

b. Contractor recognizes and understands that this Agreement may create a "possessory interest" for property tax purposes. Generally, such a possessory interest is not created unless the Agreement entitles the Contractor to possession, occupancy, or use of City property for private gain. If such a possessory interest is created, then the following shall apply:

1) Contractor, on behalf of itself and any permitted successors and assigns, recognizes and understands that Contractor, and any permitted successors and assigns, may be subject to real property tax assessments on the possessory interest;

2) Contractor, on behalf of itself and any permitted successors and assigns, recognizes and understands that the creation, extension, renewal, or assignment of this Agreement may result in a "change in ownership" for purposes of real property taxes, and therefore may result in a revaluation of any possessory interest created by this Agreement. Contractor accordingly agrees on behalf of itself and its permitted successors and assigns to report on behalf of the City to the County Assessor the information required by Revenue and Taxation Code section 480.5, as amended from time to time, and any successor provision.

3) Contractor, on behalf of itself and any permitted successors and assigns, recognizes and understands that other events also may cause a change of ownership of the possessory interest and result in the revaluation of the possessory interest. (see, e.g., Rev. & Tax. Code section 64, as amended from time to time). Contractor accordingly agrees on behalf of itself and its permitted successors and assigns to report any change in ownership to the County Assessor, the State Board of Equalization or other public agency as required by law.

4) Contractor further agrees to provide such other information as may be requested by the City to enable the City to comply with any reporting requirements for possessory interests that are imposed by applicable law.

11. **Payment Does Not Imply Acceptance of Work.** The granting of any payment by City, or the receipt thereof by Contractor, shall in no way lessen the liability of Contractor to replace unsatisfactory work, equipment, or materials, although the unsatisfactory character of such work, equipment or materials may not have been apparent or detected at the time such payment was made. Materials, equipment, components, or workmanship that do not conform to the requirements of this Agreement may be rejected by City and in such case must be replaced by Contractor without delay.

12. **Qualified Personnel.** Work under this Agreement shall be performed only by competent personnel under the supervision of and in the employment of Contractor. Contractor will comply with City's reasonable requests regarding assignment of personnel, but all personnel, including those assigned at City's request, must be supervised by Contractor. Contractor shall commit adequate resources to complete the project within the project schedule specified in this Agreement.

13. **Responsibility for Equipment.** City shall not be responsible for any damage to persons or property as a result of the use, misuse or failure of any equipment used by Contractor, or by any of its employees, even though such equipment be furnished, rented or loaned to Contractor by City.

14. **Independent Contractor; Payment of Taxes and Other Expenses**

a. **Independent Contractor.** Contractor or any agent or employee of Contractor shall be deemed at all times to be an independent contractor and is wholly responsible for the manner in which it performs the services and work requested by City under this Agreement. Contractor or any agent or employee of Contractor shall not have employee status with City, nor be entitled to participate in any plans, arrangements, or distributions by City pertaining to or in connection with any retirement, health or other benefits that City may offer its employees. Contractor or any agent or employee of Contractor is liable for the acts and omissions of itself, its employees and its agents. Contractor shall be responsible for all obligations and payments, whether imposed by federal, state or local law, including, but not limited to, FICA, income tax withholdings, unemployment compensation, insurance, and other similar responsibilities related to Contractor's performing services and work, or any agent or employee of Contractor providing same. Nothing in this Agreement shall be construed as creating an employment or agency relationship between City and Contractor or any agent or employee of Contractor. Any terms in this Agreement referring to direction from City shall be construed as providing for direction as to policy and the result of Contractor's work only, and not as to the means by which such a result is obtained. City does not retain the right to control the means or the method by which Contractor performs work under this Agreement.

b. **Payment of Taxes and Other Expenses.** Should City, in its discretion, or a relevant taxing authority such as the Internal Revenue Service or the State Employment Development Division, or both, determine that Contractor is an employee for purposes of collection of any employment taxes, the amounts payable under this Agreement shall be reduced by amounts equal to both the employee and employer portions of the tax due (and offsetting any credits for amounts already paid by Contractor which can be applied against this liability). City shall then forward those amounts to the relevant taxing authority. Should a relevant taxing authority determine a liability for past services performed by Contractor for City, upon notification of such fact by City, Contractor shall promptly remit such amount due or arrange with City to have the amount due withheld from future payments to Contractor under this Agreement (again, offsetting any amounts already paid by Contractor which can be applied as a credit against such liability). A determination of employment status pursuant to the preceding two paragraphs shall be solely for the purposes of the particular tax in question, and for all other purposes of this Agreement, Contractor shall not be considered an employee of City. Notwithstanding the foregoing, should any court, arbitrator, or administrative authority determine that Contractor is an employee for any other purpose, then Contractor agrees to a reduction in City's financial liability so that City's total

expenses under this Agreement are not greater than they would have been had the court, arbitrator, or administrative authority determined that Contractor was not an employee.

15. Insurance

a. Without in any way limiting Contractor's liability pursuant to the "Indemnification" section of this Agreement, Contractor must maintain in force, during the full term of the Agreement, insurance in the following amounts and coverages:

1) Workers' Compensation, in statutory amounts, with Employers' Liability Limits not less than \$1,000,000 each accident, injury, or illness; and

2) Commercial General Liability Insurance with limits not less than \$5,000,000 each occurrence Combined Single Limit for Bodily Injury and Property Damage, including Contractual Liability, Personal Injury, Products and Completed Operations; and

3) Commercial Automobile Liability Insurance with limits not less than \$2,000,000 each occurrence Combined Single Limit for Bodily Injury and Property Damage, including Owned, Non-Owned and Hired auto coverage, as applicable.

b. Commercial General Liability and Commercial Automobile Liability Insurance policies must be endorsed to provide:

1) Name as Additional Insured the City and County of San Francisco, its Officers, Agents, and Employees.

2) That such policies are primary insurance to any other insurance available to the Additional Insureds, with respect to any claims arising out of this Agreement, and that insurance applies separately to each insured against whom claim is made or suit is brought.

c. Regarding Workers' Compensation, Contractor hereby agrees to waive subrogation which any insurer of Contractor may acquire from Contractor by virtue of the payment of any loss. Contractor agrees to obtain any endorsement that may be necessary to affect this waiver of subrogation. The Workers' Compensation policy shall be endorsed with a waiver of subrogation in favor of the City for all work performed by the Contractor, its employees, agents and subcontractors.

d. All policies shall provide thirty days' advance written notice to the City of reduction or nonrenewal of coverages or cancellation of coverages for any reason. Notices shall be sent to the City address in the "Notices to the Parties" section.

e. Should any of the required insurance be provided under a claims-made form, Contractor shall maintain such coverage continuously throughout the term of this Agreement and, without lapse, for a period of three years beyond the expiration of this Agreement, to the effect that, should occurrences during the contract term give rise to claims made after expiration of the Agreement, such claims shall be covered by such claims-made policies.

f. Should any of the required insurance be provided under a form of coverage that includes a general annual aggregate limit or provides that claims investigation or legal defense costs be included in such general annual aggregate limit, such general annual aggregate limit shall be double the occurrence or claims limits specified above.

g. Should any required insurance lapse during the term of this Agreement, requests for payments originating after such lapse shall not be processed until the City receives satisfactory evidence of reinstated coverage as required by this Agreement, effective as of the lapse date. If insurance is not reinstated, the City may, at its sole option, terminate this Agreement effective on the date of such lapse of insurance.

h. Before commencing any operations under this Agreement, Contractor shall furnish to City certificates of insurance and additional insured policy endorsements with insurers with ratings comparable to A-, VIII or higher, that are authorized to do business in the State of California, and that are satisfactory to City, in form evidencing all coverages set forth above. Failure to maintain insurance shall constitute a material breach of this Agreement.

i. Approval of the insurance by City shall not relieve or decrease the liability of Contractor hereunder.

j. If a subcontractor will be used to complete any portion of this agreement, the Contractor shall ensure that the subcontractor shall provide all necessary insurance and shall name the City and County of San Francisco, its officers, agents and employees and the Contractor listed as additional insureds.

16. Indemnification. Contractor shall indemnify and save harmless City and its officers, agents and employees from, and, if requested, shall defend them against any and all loss, cost, damage, injury, liability, and claims thereof for injury to or death of a person, including employees of Contractor or loss of or damage to property, arising directly or indirectly from Contractor's performance of this Agreement, including, but not limited to, Contractor's use of facilities or equipment provided by City or others, regardless of the negligence of, and regardless of whether liability without fault is imposed or sought to be imposed on City, except to the extent that such indemnity is void or otherwise unenforceable under applicable law in effect on or validly retroactive to the date of this Agreement, and except where such loss, damage, injury, liability or claim is the result of the active negligence or willful misconduct of City and is not contributed to by any act of, or by any omission to perform some duty imposed by law or agreement on Contractor, its subcontractors or either's agent or employee. The foregoing indemnity shall include, without limitation, reasonable fees of attorneys, consultants and experts and related costs and City's costs of investigating any claims against the City. In addition to Contractor's obligation to indemnify City, Contractor specifically acknowledges and agrees that it has an immediate and independent obligation to defend City from any claim which actually or potentially falls within this indemnification provision, even if the allegations are or may be groundless, false or fraudulent, which obligation arises at the time such claim is tendered to Contractor by City and continues at all times thereafter. Contractor shall indemnify and hold City harmless from all loss and liability, including attorneys' fees, court costs and all other litigation expenses for any infringement of the patent rights, copyright, trade secret or any other proprietary right or trademark, and all other intellectual property claims of any person or persons in consequence of the use by City, or any of its officers or agents, of articles or services to be supplied in the performance of this Agreement.

17. Incidental and Consequential Damages. Contractor shall be responsible for incidental and consequential damages resulting in whole or in part from Contractor's acts or omissions. Nothing in this Agreement shall constitute a waiver or limitation of any rights that City may have under applicable law.

18. Liability of City. CITY'S PAYMENT OBLIGATIONS UNDER THIS AGREEMENT SHALL BE LIMITED TO THE PAYMENT OF THE COMPENSATION PROVIDED FOR IN SECTION 5 OF THIS AGREEMENT. NOTWITHSTANDING ANY OTHER PROVISION OF THIS AGREEMENT, IN NO EVENT SHALL CITY BE LIABLE, REGARDLESS OF WHETHER ANY CLAIM IS BASED

ON CONTRACT OR TORT, FOR ANY SPECIAL, CONSEQUENTIAL, INDIRECT OR INCIDENTAL DAMAGES, INCLUDING, BUT NOT LIMITED TO, LOST PROFITS, ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT OR THE SERVICES PERFORMED IN CONNECTION WITH THIS AGREEMENT.

19. **Liquidated Damages.** By entering into this Agreement, Contractor agrees that in the event the Services, as provided under Section 4 herein, are not performed as provided in the Contract Documents, City will suffer actual damages that will be impractical or extremely difficult to determine. Therefore, Contractor agrees that the following sums are not penalties, but are reasonable estimates of the loss that City will incur for each failure to provide adequate services. City may deduct a sum representing the liquidated damages from any money due to Contractor. Such deductions shall not be considered a penalty, but rather agreed monetary damages sustained by City because of Contractor's failure to deliver to City the Work as outlined in this Agreement.

a. In the event that more than four (4) combined escalators and electric walks are out of service at one time, the City may collect as liquidated damages, the sum of Five Thousand dollars (\$5,000) per hour for each escalator or electric walk above four (4) escalators or electric walks that are out of service;

b. In the event any combined escalators and electric walks on the 'critical moving equipment list' (approximately 20 escalators or electric walks) generated and periodically revised by the Commission are out of service for more than 4-hours at a time, the City may collect as liquidated damages, the sum of Six Hundred dollars (\$600) per 15-minute increment until such equipment is safely operational.

c. In the event any combined escalators and electric walks other than those on the 'critical moving equipment list' (approximately 20 escalators or electric walks) is out of service for more than four (4) hours during Regular Work Hours or five (5) hours outside of Regular Work Hours, the City may collect as liquidated damages, the sum of Four Hundred dollars (\$400) per 15-minute increment until such equipment is safely operational.

20. **Default; Remedies**

a. Each of the following shall constitute an "Event of Default" under this Agreement:

1) Contractor fails to immediately correct any unsafe condition relating to elevators, whether Contractor becomes aware of the condition through routine inspection, through notification by the Commission, or through any other means.

2) Contractor fails or refuses to perform or observe any term, covenant or condition contained in any of the following Sections of this Agreement:

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|---|---------------------------------------|
| 8. Submitting False Claims; Monetary Penalties. | 30. Assignment |
| 10. Taxes | 37. Drug-free workplace policy |
| 15. Insurance | 53. Compliance with laws |
| 24. Proprietary or confidential information of City | 55. Supervision of minors |
| | 57. Protection of private information |

3) Contractor fails or refuses to perform or observe any other term, covenant or condition contained in this Agreement, and such failure or refusal continues for a period of ten (10) days after written notice thereof from City to Contractor.

4) Contractor fails or refuses to perform or observe any combination of terms, covenants or conditions contained in this Agreement more than five (5) times within any 90-day period, upon written notice thereof from the City to Contractor on each failure or refusal.

5) Contractor (a) is generally not paying its debts as they become due, (b) files, or consents by answer or otherwise to the filing against it of, a petition for relief or reorganization or arrangement or any other petition in bankruptcy or for liquidation or to take advantage of any bankruptcy, insolvency or other debtors' relief law of any jurisdiction, (c) makes an assignment for the benefit of its creditors, (d) consents to the appointment of a custodian, receiver, trustee or other officer with similar powers of Contractor or of any substantial part of Contractor's property or (e) takes action for the purpose of any of the foregoing.

6) A court or government authority enters an order (a) appointing a custodian, receiver, trustee or other officer with similar powers with respect to Contractor or with respect to any substantial part of Contractor's property, (b) constituting an order for relief or approving a petition for relief or reorganization or arrangement or any other petition in bankruptcy or for liquidation or to take advantage of any bankruptcy, insolvency or other debtors' relief law of any jurisdiction or (c) ordering the dissolution, winding-up or liquidation of Contractor.

b. On and after any Event of Default, City shall have the right to exercise its legal and equitable remedies, including, without limitation, the right to terminate this Agreement or to seek specific performance of all or any part of this Agreement. In addition, City shall have the right (but no obligation) to cure (or cause to be cured) on behalf of Contractor any Event of Default; Contractor shall pay to City on demand all costs and expenses incurred by City in effecting such cure, with interest thereon from the date of incurrence at the maximum rate then permitted by law. City shall have the right to offset from any amounts due to Contractor under this Agreement or any other agreement between City and Contractor all damages, losses, costs or expenses incurred by City as a result of such Event of Default and any liquidated damages due from Contractor pursuant to the terms of this Agreement or any other agreement.

c. All remedies provided for in this Agreement may be exercised individually or in combination with any other remedy available hereunder or under applicable laws, rules and regulations. The exercise of any remedy shall not preclude or in any way be deemed to waive any other remedy.

21. Termination for Convenience

a. City shall have the option, in its sole discretion, to terminate this Agreement, at any time during the term hereof, for convenience and without cause. City shall exercise this option by giving Contractor written notice of termination. The notice shall specify the date on which termination shall become effective.

b. Upon receipt of the notice, Contractor shall commence and perform, with diligence, all actions necessary on the part of Contractor to effect the termination of this Agreement on the date specified by City and to minimize the liability of Contractor and City to third parties as a result of termination. All such actions shall be subject to the prior approval of City. Such actions shall include, without limitation:

- 1) Halting the performance of all services and other work under this Agreement on the date(s) and in the manner specified by City.
- 2) Not placing any further orders or subcontracts for materials, services, equipment or other items.
- 3) Terminating all existing orders and subcontracts.
- 4) At City's direction, assigning to City any or all of Contractor's right, title, and interest under the orders and subcontracts terminated. Upon such assignment, City shall have the right, in its sole discretion, to settle or pay any or all claims arising out of the termination of such orders and subcontracts.
- 5) Subject to City's approval, settling all outstanding liabilities and all claims arising out of the termination of orders and subcontracts.
- 6) Completing performance of any services or work that City designates to be completed prior to the date of termination specified by City.
- 7) Taking such action as may be necessary, or as the City may direct, for the protection and preservation of any property related to this Agreement which is in the possession of Contractor and in which City has or may acquire an interest.

c. Within 30 days after the specified termination date, Contractor shall submit to City an invoice, which shall set forth each of the following as a separate line item:

- 1) The reasonable cost to Contractor, without profit, for all services and other work City directed Contractor to perform prior to the specified termination date, for which services or work City has not already tendered payment. Reasonable costs may include a reasonable allowance for actual overhead, not to exceed a total of 10% of Contractor's direct costs for services or other work. Any overhead allowance shall be separately itemized. Contractor may also recover the reasonable cost of preparing the invoice.
- 2) A reasonable allowance for profit on the cost of the services and other work described in the immediately preceding subsection (1), provided that Contractor can establish, to the satisfaction of City, that Contractor would have made a profit had all services and other work under this Agreement been completed, and provided further, that the profit allowed shall in no event exceed 5% of such cost.
- 3) The reasonable cost to Contractor of handling material or equipment returned to the vendor, delivered to the City or otherwise disposed of as directed by the City.
- 4) A deduction for the cost of materials to be retained by Contractor, amounts realized from the sale of materials and not otherwise recovered by or credited to City, and any other appropriate credits to City against the cost of the services or other work.

d. In no event shall City be liable for costs incurred by Contractor or any of its subcontractors after the termination date specified by City, except for those costs specifically enumerated and described in the immediately preceding subsection (c). Such non-recoverable costs include, but are not limited to, anticipated profits on this Agreement, post-termination employee salaries, post-termination administrative expenses, post-termination overhead or unabsorbed overhead, attorneys' fees or other costs

relating to the prosecution of a claim or lawsuit, prejudgment interest, or any other expense which is not reasonable or authorized under such subsection (c).

e. In arriving at the amount due to Contractor under this Section, City may deduct: (1) all payments previously made by City for work or other services covered by Contractor's final invoice; (2) any claim which City may have against Contractor in connection with this Agreement; (3) any invoiced costs or expenses excluded pursuant to the immediately preceding subsection (d); and (4) in instances in which, in the opinion of the City, the cost of any service or other work performed under this Agreement is excessively high due to costs incurred to remedy or replace defective or rejected services or other work, the difference between the invoiced amount and City's estimate of the reasonable cost of performing the invoiced services or other work in compliance with the requirements of this Agreement.

f. City's payment obligation under this Section shall survive termination of this Agreement.

22. Rights and Duties upon Termination or Expiration. This Section and the following Sections of this Agreement shall survive termination or expiration of this Agreement:

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| 8. Submitting false claims | 24. Proprietary or confidential information of City |
| 9. Disallowance | 26. Ownership of Results |
| 10. Taxes | 27. Works for Hire |
| 11. Payment does not imply acceptance of work | 28. Audit and Inspection of Records |
| 13. Responsibility for equipment | 48. Modification of Agreement. |
| 14. Independent Contractor; Payment of Taxes and Other Expenses | 49. Administrative Remedy for Agreement Interpretation. |
| 15. Insurance | 50. Agreement Made in California; Venue |
| 16. Indemnification | 51. Construction |
| 17. Incidental and Consequential Damages | 52. Entire Agreement |
| 18. Liability of City | 56. Severability |
| | 57. Protection of private information |

Subject to the immediately preceding sentence, upon termination of this Agreement prior to expiration of the term specified in Section 2, this Agreement shall terminate and be of no further force or effect. Contractor shall transfer title to City, and deliver in the manner, at the times, and to the extent, if any, directed by City, any work in progress, completed work, supplies, equipment, and other materials produced as a part of, or acquired in connection with the performance of this Agreement, and any completed or partially completed work which, if this Agreement had been completed, would have been required to be furnished to City. This subsection shall survive termination of this Agreement.

23. Conflict of Interest. Through its execution of this Agreement, Contractor acknowledges that it is familiar with the provision of Section 15.103 of the City's Charter, Article III, Chapter 2 of City's Campaign and Governmental Conduct Code, and Section 87100 et seq. and Section 1090 et seq. of the Government Code of the State of California, and certifies that it does not know of any facts which constitutes a violation of said provisions and agrees that it will immediately notify the City if it becomes aware of any such fact during the term of this Agreement.

24. Proprietary or Confidential Information of City. Contractor understands and agrees that, in the performance of the work or services under this Agreement or in contemplation thereof, Contractor may have access to private or confidential information which may be owned or controlled by City and that such information may contain proprietary or confidential details, the disclosure of which to third parties may be damaging to City. Contractor agrees that all information disclosed by City to Contractor

shall be held in confidence and used only in performance of the Agreement. Contractor shall exercise the same standard of care to protect such information as a reasonably prudent contractor would use to protect its own proprietary data.

25. **Notices to the Parties.** Unless otherwise indicated elsewhere in this Agreement, all written communications sent by the parties may be by U.S. mail, e-mail or by fax, and shall be addressed as follows:

To City: San Francisco International Airport
Mechanical Maintenance
P.O. Box 8097
San Francisco, CA 94128-3682
Attention: Amor Bautista/Timothy Hatfield

amor.bautista@flysfo.com / timothy.hatfield@flysfo.com

To Contractor: ThyssenKrupp Elevator Corporation
520 Townsend Street, Second Floor
San Francisco, CA 94103
Attention: Rosaland Stewart

rosaland.stewart@thyssenkrupp.com

Any notice of default must be sent by registered mail.

26. **Ownership of Results.** Any interest of Contractor or its Subcontractors, in drawings, plans, specifications, blueprints, studies, reports, memoranda, computation sheets, computer files and media or other documents prepared by Contractor or its subcontractors in connection with services to be performed under this Agreement, shall become the property of and will be transmitted to City. However, Contractor may retain and use copies for reference and as documentation of its experience and capabilities.

27. **Works for Hire.** If, in connection with services performed under this Agreement, Contractor or its subcontractors create artwork, copy, posters, billboards, photographs, videotapes, audiotapes, systems designs, software, reports, diagrams, surveys, blueprints, source codes or any other original works of authorship, such works of authorship shall be works for hire as defined under Title 17 of the United States Code, and all copyrights in such works are the property of the City. If it is ever determined that any works created by Contractor or its subcontractors under this Agreement are not works for hire under U.S. law, Contractor hereby assigns all copyrights to such works to the City, and agrees to provide any material and execute any documents necessary to effectuate such assignment. With the approval of the City, Contractor may retain and use copies of such works for reference and as documentation of its experience and capabilities.

28. **Audit and Inspection of Records.** Contractor agrees to maintain and make available to the City, during regular business hours, accurate books and accounting records relating to its work under this Agreement. Contractor will permit City to audit, examine and make excerpts and transcripts from such books and records, and to make audits of all invoices, materials, payrolls, records or personnel and other data related to all other matters covered by this Agreement, whether funded in whole or in part under this Agreement. Contractor shall maintain such data and records in an accessible location and condition for a period of not less than five years after final payment under this Agreement or until after final audit has

been resolved, whichever is later. The State of California or any federal agency having an interest in the subject matter of this Agreement shall have the same rights conferred upon City by this Section.

29. **Subcontracting.** Contractor is prohibited from subcontracting this Agreement or any part of it unless such subcontracting is first approved by City in writing. Neither party shall, on the basis of this Agreement, contract on behalf of or in the name of the other party. An agreement made in violation of this provision shall confer no rights on any party and shall be null and void.

30. **Assignment.** The services to be performed by Contractor are personal in character and neither this Agreement nor any duties or obligations hereunder may be assigned or delegated by the Contractor unless first approved by City by written instrument executed and approved in the same manner as this Agreement.

31. **Non-Waiver of Rights.** The omission by either party at any time to enforce any default or right reserved to it, or to require performance of any of the terms, covenants, or provisions hereof by the other party at the time designated, shall not be a waiver of any such default or right to which the party is entitled, nor shall it in any way affect the right of the party to enforce such provisions thereafter.

32. **Earned Income Credit (EIC) Forms. Intentionally omitted.**

33. **Local Business Enterprise Utilization; Liquidated Damages**

a. **The LBE Ordinance.** This Agreement is exempt from the Local Business Enterprise subcontracting goal requirements set forth in Section 14B.8 of the San Francisco Administrative Code. Contractor, shall comply with all other requirements of the Local Business Enterprise and Non-Discrimination in Contracting Ordinance set forth in Chapter 14B of the San Francisco Administrative Code as it now exists or as it may be amended in the future (collectively the "LBE Ordinance"), provided such amendments do not materially increase Contractor's obligations or liabilities, or materially diminish Contractor's rights, under this Agreement. Such provisions of the LBE Ordinance are incorporated by reference and made a part of this Agreement as though fully set forth in this section. Contractor's willful failure to comply with any applicable provisions of the LBE Ordinance is a material breach of Contractor's obligations under this Agreement and shall entitle City, subject to any applicable notice and cure provisions set forth in this Agreement, to exercise any of the remedies provided for under this Agreement, under the LBE Ordinance or otherwise available at law or in equity, which remedies shall be cumulative unless this Agreement expressly provides that any remedy is exclusive. In addition, Contractor shall comply fully with all other applicable local, state and federal laws prohibiting discrimination and requiring equal opportunity in contracting, including subcontracting.

b. **Compliance and Enforcement.** If Contractor willfully fails to comply with any of the provisions of the LBE Ordinance, the rules and regulations implementing the LBE Ordinance, or the provisions of this Agreement pertaining to LBE participation, Contractor shall be liable for liquidated damages in an amount equal to Contractor's net profit on this Agreement, or 10% of the total amount of this Agreement, or \$1,000, whichever is greatest. The Director of the City's Contract Monitoring Division ("CMD") or any other public official authorized to enforce the LBE Ordinance (separately and collectively, the "Director of CMD") may also impose other sanctions against Contractor authorized in the LBE Ordinance, including declaring the Contractor to be irresponsible and ineligible to contract with the City for a period of up to five years or revocation of the Contractor's LBE certification. The Director of CMD will determine the sanctions to be imposed, including the amount of liquidated damages, after investigation pursuant to Administrative Code §14B.17. By entering into this Agreement, Contractor acknowledges and agrees that any liquidated damages assessed by the Director of the CMD shall be payable to City upon demand. Contractor further acknowledges and agrees that any liquidated damages

assessed may be withheld from any monies due to Contractor on any contract with City. Contractor agrees to maintain records necessary for monitoring its compliance with the LBE Ordinance for a period of three years following termination or expiration of this Agreement, and shall make such records available for audit and inspection by the Director of CMD or the Controller upon request.

34. **Nondiscrimination; Penalties**

a. **Contractor Shall Not Discriminate.** In the performance of this Agreement, Contractor agrees not to discriminate against any employee, City and County employee working with such contractor or subcontractor, applicant for employment with such contractor or subcontractor, or against any person seeking accommodations, advantages, facilities, privileges, services, or membership in all business, social, or other establishments or organizations, on the basis of the fact or perception of a person's race, color, creed, religion, national origin, ancestry, age, height, weight, sex, sexual orientation, gender identity, domestic partner status, marital status, disability or Acquired Immune Deficiency Syndrome or HIV status (AIDS/HIV status), or association with members of such protected classes, or in retaliation for opposition to discrimination against such classes.

b. **Subcontracts.** Contractor shall incorporate by reference in all subcontracts the provisions of §§12B.2(a), 12B.2(c)-(k), and 12C.3 of the San Francisco Administrative Code (copies of which are available from Purchasing) and shall require all subcontractors to comply with such provisions. Contractor's failure to comply with the obligations in this subsection shall constitute a material breach of this Agreement.

c. **Nondiscrimination in Benefits.** Contractor does not as of the date of this Agreement and will not during the term of this Agreement, in any of its operations in San Francisco, on real property owned by San Francisco, or where work is being performed for the City elsewhere in the United States, discriminate in the provision of bereavement leave, family medical leave, health benefits, membership or membership discounts, moving expenses, pension and retirement benefits or travel benefits, as well as any benefits other than the benefits specified above, between employees with domestic partners and employees with spouses, and/or between the domestic partners and spouses of such employees, where the domestic partnership has been registered with a governmental entity pursuant to state or local law authorizing such registration, subject to the conditions set forth in §12B.2(b) of the San Francisco Administrative Code.

d. **Condition to Contract.** As a condition to this Agreement, Contractor shall execute the "Chapter 12B Declaration: Nondiscrimination in Contracts and Benefits" form (form CMD-12B-101) with supporting documentation and secure the approval of the form by the San Francisco Contract Monitoring Division.

e. **Incorporation of Administrative Code Provisions by Reference.** The provisions of Chapters 12B and 12C of the San Francisco Administrative Code are incorporated in this Section by reference and made a part of this Agreement as though fully set forth herein. Contractor shall comply fully with and be bound by all of the provisions that apply to this Agreement under such Chapters, including but not limited to the remedies provided in such Chapters. Without limiting the foregoing, Contractor understands that pursuant to §§12B.2(h) and 12C.3(g) of the San Francisco Administrative Code, a penalty of \$50 for each person for each calendar day during which such person was discriminated against in violation of the provisions of this Agreement may be assessed against Contractor and/or deducted from any payments due Contractor.

35. **MacBride Principles—Northern Ireland.** Pursuant to San Francisco Administrative Code §12F.5, the City and County of San Francisco urges companies doing business in Northern Ireland to

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

36. Tropical Hardwood and Virgin Redwood Ban. Pursuant to §804(b) of the San Francisco Environment Code, the City and County of San Francisco urges contractors not to import, purchase, obtain, or use for any purpose, any tropical hardwood, tropical hardwood wood product, virgin redwood or virgin redwood wood product.

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

38. Resource Conservation. Chapter 5 of the San Francisco Environment Code ("Resource Conservation") is incorporated herein by reference. Failure by Contractor to comply with any of the applicable requirements of Chapter 5 will be deemed a material breach of contract.

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

40. Sunshine Ordinance. In accordance with San Francisco Administrative Code §67.24(e), contracts, contractors' bids, responses to solicitations and all other records of communications between City and persons or firms seeking contracts, shall be open to inspection immediately after a contract has been awarded. Nothing in this provision requires the disclosure of a private person or organization's net worth or other proprietary financial data submitted for qualification for a contract or other benefit until and unless that person or organization is awarded the contract or benefit. Information provided which is covered by this paragraph will be made available to the public upon request.

41. Public Access to Meetings and Records. If the Contractor receives a cumulative total per year of at least \$250,000 in City funds or City-administered funds and is a non-profit organization as defined in Chapter 12L of the San Francisco Administrative Code, Contractor shall comply with and be bound by all the applicable provisions of that Chapter. By executing this Agreement, the Contractor agrees to open its meetings and records to the public in the manner set forth in §§12L.4 and 12L.5 of the Administrative Code. Contractor further agrees to make-good faith efforts to promote community membership on its Board of Directors in the manner set forth in §12L.6 of the Administrative Code. The Contractor acknowledges that its material failure to comply with any of the provisions of this paragraph shall constitute a material breach of this Agreement. The Contractor further acknowledges that such material breach of the Agreement shall be grounds for the City to terminate and/or not renew the Agreement, partially or in its entirety.

42. Limitations on Contributions. Through execution of this Agreement, Contractor acknowledges that it is familiar with section 1.126 of the City's Campaign and Governmental Conduct Code, which prohibits any person who contracts with the City for the rendition of personal services, for the furnishing of any material, supplies or equipment, for the sale or lease of any land or building, or for a grant, loan or loan guarantee, from making any campaign contribution to (1) an individual holding a City elective office if the contract must be approved by the individual, a board on which that individual serves, or the board of a state agency on which an appointee of that individual serves, (2) a candidate for the office held by such individual, or (3) a committee controlled by such individual, at any time from the commencement of negotiations for the contract until the later of either the termination of negotiations for such contract or six months after the date the contract is approved. Contractor acknowledges that the foregoing restriction applies only if the contract or a combination or series of contracts approved by the same individual or board in a fiscal year have a total anticipated or actual value of \$50,000 or more. Contractor further acknowledges that the prohibition on contributions applies to each prospective party to the contract; each member of Contractor's board of directors; Contractor's chairperson, chief executive officer, chief financial officer and chief operating officer; any person with an ownership interest of more than 20 percent in Contractor; any subcontractor listed in the bid or contract; and any committee that is sponsored or controlled by Contractor. Additionally, Contractor acknowledges that Contractor must inform each of the persons described in the preceding sentence of the prohibitions contained in Section 1.126. Contractor further agrees to provide to City the names of each person, entity or committee described above.

43. Requiring Minimum Compensation for Covered Employees

a. Contractor agrees to comply fully with and be bound by all of the provisions of the Minimum Compensation Ordinance (MCO), as set forth in San Francisco Administrative Code Chapter 12P (Chapter 12P), including the remedies provided, and implementing guidelines and rules. The provisions of Sections 12P.5 and 12P.5.1 of Chapter 12P are incorporated herein by reference and made a part of this Agreement as though fully set forth. The text of the MCO is available on the web at www.sfgov.org/olse/mco. A partial listing of some of Contractor's obligations under the MCO is set forth in this Section. Contractor is required to comply with all the provisions of the MCO, irrespective of the listing of obligations in this Section.

b. The MCO requires Contractor to pay Contractor's employees a minimum hourly gross compensation wage rate and to provide minimum compensated and uncompensated time off. The minimum wage rate may change from year to year and Contractor is obligated to keep informed of the then-current requirements. Any subcontract entered into by Contractor shall require the subcontractor to comply with the requirements of the MCO and shall contain contractual obligations substantially the same as those set forth in this Section. It is Contractor's obligation to ensure that any subcontractors of any tier under this Agreement comply with the requirements of the MCO. If any subcontractor under this Agreement fails to comply, City may pursue any of the remedies set forth in this Section against Contractor.

c. Contractor shall not take adverse action or otherwise discriminate against an employee or other person for the exercise or attempted exercise of rights under the MCO. Such actions, if taken within 90 days of the exercise or attempted exercise of such rights, will be rebuttably presumed to be retaliation prohibited by the MCO.

d. Contractor shall maintain employee and payroll records as required by the MCO. If Contractor fails to do so, it shall be presumed that the Contractor paid no more than the minimum wage required under State law.

e. The City is authorized to inspect Contractor's job sites and conduct interviews with employees and conduct audits of Contractor.

f. Contractor's commitment to provide the Minimum Compensation is a material element of the City's consideration for this Agreement. The City in its sole discretion shall determine whether such a breach has occurred. The City and the public will suffer actual damage that will be impractical or extremely difficult to determine if the Contractor fails to comply with these requirements. Contractor agrees that the sums set forth in Section 12P.6.1 of the MCO as liquidated damages are not a penalty, but are reasonable estimates of the loss that the City and the public will incur for Contractor's noncompliance. The procedures governing the assessment of liquidated damages shall be those set forth in Section 12P.6.2 of Chapter 12P.

g. Contractor understands and agrees that if it fails to comply with the requirements of the MCO, the City shall have the right to pursue any rights or remedies available under Chapter 12P (including liquidated damages), under the terms of the contract, and under applicable law. If, within 30 days after receiving written notice of a breach of this Agreement for violating the MCO, Contractor fails to cure such breach or, if such breach cannot reasonably be cured within such period of 30 days, Contractor fails to commence efforts to cure within such period, or thereafter fails diligently to pursue such cure to completion, the City shall have the right to pursue any rights or remedies available under applicable law, including those set forth in Section 12P.6(c) of Chapter 12P. Each of these remedies shall be exercisable individually or in combination with any other rights or remedies available to the City.

h. Contractor represents and warrants that it is not an entity that was set up, or is being used, for the purpose of evading the intent of the MCO.

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

44. Requiring Health Benefits for Covered Employees

Contractor agrees to comply fully with and be bound by all of the provisions of the Health Care Accountability Ordinance (HCAO), as set forth in San Francisco Administrative Code Chapter 12Q, including the remedies provided, and implementing regulations, as the same may be amended from time to time. The provisions of section 12Q.5.1 of Chapter 12Q are incorporated by reference and made a part of this Agreement as though fully set forth herein. The text of the HCAO is available on the web at www.sfgov.org/olse. Capitalized terms used in this Section and not defined in this Agreement shall have the meanings assigned to such terms in Chapter 12Q.

a. For each Covered Employee, Contractor shall provide the appropriate health benefit set forth in Section 12Q.3 of the HCAO. If Contractor chooses to offer the health plan option, such health plan shall meet the minimum standards set forth by the San Francisco Health Commission.

b. Notwithstanding the above, if the Contractor is a small business as defined in Section 12Q.3(e) of the HCAO, it shall have no obligation to comply with part (a) above.

c. Contractor's failure to comply with the HCAO shall constitute a material breach of this agreement. City shall notify Contractor if such a breach has occurred. If, within 30 days after receiving

City's written notice of a breach of this Agreement for violating the HCAO, Contractor fails to cure such breach or, if such breach cannot reasonably be cured within such period of 30 days, Contractor fails to commence efforts to cure within such period, or thereafter fails diligently to pursue such cure to completion, City shall have the right to pursue the remedies set forth in 12Q.5.1 and 12Q.5(f)(1-6). Each of these remedies shall be exercisable individually or in combination with any other rights or remedies available to City.

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

e. Contractor shall not discharge, reduce in compensation, or otherwise discriminate against any employee for notifying City with regard to Contractor's noncompliance or anticipated noncompliance with the requirements of the HCAO, for opposing any practice proscribed by the HCAO, for participating in proceedings related to the HCAO, or for seeking to assert or enforce any rights under the HCAO by any lawful means.

f. Contractor represents and warrants that it is not an entity that was set up, or is being used, for the purpose of evading the intent of the HCAO.

g. Contractor shall maintain employee and payroll records in compliance with the California Labor Code and Industrial Welfare Commission orders, including the number of hours each employee has worked on the City Contract.

h. Contractor shall keep itself informed of the current requirements of the HCAO.

i. Contractor shall provide reports to the City in accordance with any reporting standards promulgated by the City under the HCAO, including reports on Subcontractors and Subtenants, as applicable.

j. Contractor shall provide City with access to records pertaining to compliance with HCAO after receiving a written request from City to do so and being provided at least ten business days to respond.

k. Contractor shall allow City to inspect Contractor's job sites and have access to Contractor's employees in order to monitor and determine compliance with HCAO.

l. City may conduct random audits of Contractor to ascertain its compliance with HCAO. Contractor agrees to cooperate with City when it conducts such audits.

m. If Contractor is exempt from the HCAO when this Agreement is executed because its amount is less than \$25,000 (\$50,000 for nonprofits), but Contractor later enters into an agreement or agreements that cause Contractor's aggregate amount of all agreements with City to reach \$75,000, all the agreements shall be thereafter subject to the HCAO. This obligation arises on the effective date of the

agreement that causes the cumulative amount of agreements between Contractor and the City to be equal to or greater than \$75,000 in the fiscal year.

45. First Source Hiring Program

a. **Application of Administrative Code Provisions by Reference.** The provisions of Chapter 83 of the San Francisco Administrative Code apply to this Agreement. Contractor shall comply fully with, and be bound by, all of the provisions that apply to this Agreement under such Chapter, including but not limited to the remedies provided therein. Capitalized terms used in this Section and not defined in this Agreement shall have the meanings assigned to such terms in Chapter 83.

b. **First Source Hiring Agreement.** As an essential term of, and consideration for, any contract or property contract with the City, not exempted by the FSHA, the Contractor shall enter into a first source hiring agreement ("agreement") with the City, on or before the effective date of the contract or property contract. Contractors shall also enter into an agreement with the City for any other work that it performs in the City. Such agreement shall:

1) Set appropriate hiring and retention goals for entry level positions. The employer shall agree to achieve these hiring and retention goals, or, if unable to achieve these goals, to establish good faith efforts as to its attempts to do so, as set forth in the agreement. The agreement shall take into consideration the employer's participation in existing job training, referral and/or brokerage programs. Within the discretion of the FSHA, subject to appropriate modifications, participation in such programs may be certified as meeting the requirements of this Chapter. Failure either to achieve the specified goal, or to establish good faith efforts will constitute noncompliance and will subject the employer to the provisions of Section 83.10 of this Chapter.

2) Set first source interviewing, recruitment and hiring requirements, which will provide the San Francisco Workforce Development System with the first opportunity to provide qualified economically disadvantaged individuals for consideration for employment for entry level positions. Employers shall consider all applications of qualified economically disadvantaged individuals referred by the System for employment; provided however, if the employer utilizes nondiscriminatory screening criteria, the employer shall have the sole discretion to interview and/or hire individuals referred or certified by the San Francisco Workforce Development System as being qualified economically disadvantaged individuals. The duration of the first source interviewing requirement shall be determined by the FSHA and shall be set forth in each agreement, but shall not exceed 10 days. During that period, the employer may publicize the entry level positions in accordance with the agreement. A need for urgent or temporary hires must be evaluated, and appropriate provisions for such a situation must be made in the agreement.

3) Set appropriate requirements for providing notification of available entry level positions to the San Francisco Workforce Development System so that the System may train and refer an adequate pool of qualified economically disadvantaged individuals to participating employers. Notification should include such information as employment needs by occupational title, skills, and/or experience required, the hours required, wage scale and duration of employment, identification of entry level and training positions, identification of English language proficiency requirements, or absence thereof, and the projected schedule and procedures for hiring for each occupation. Employers should provide both long-term job need projections and notice before initiating the interviewing and hiring process. These notification requirements will take into consideration any need to protect the employer's proprietary information.

4) Set appropriate record keeping and monitoring requirements. The First Source Hiring Administration shall develop easy-to-use forms and record keeping requirements for documenting compliance with the agreement. To the greatest extent possible, these requirements shall utilize the employer's existing record keeping systems, be nonduplicative, and facilitate a coordinated flow of information and referrals.

5) Establish guidelines for employer good faith efforts to comply with the first source hiring requirements of this Chapter. The FSHA will work with City departments to develop employer good faith effort requirements appropriate to the types of contracts and property contracts handled by each department. Employers shall appoint a liaison for dealing with the development and implementation of the employer's agreement. In the event that the FSHA finds that the employer under a City contract or property contract has taken actions primarily for the purpose of circumventing the requirements of this Chapter, that employer shall be subject to the sanctions set forth in Section 83.10 of this Chapter.

6) Set the term of the requirements.

7) Set appropriate enforcement and sanctioning standards consistent with this Chapter.

8) Set forth the City's obligations to develop training programs, job applicant referrals, technical assistance, and information systems that assist the employer in complying with this Chapter.

9) Require the developer to include notice of the requirements of this Chapter in leases, subleases, and other occupancy contracts.

c. **Hiring Decisions.** Contractor shall make the final determination of whether an Economically Disadvantaged Individual referred by the System is "qualified" for the position.

d. **Exceptions.** Upon application by Employer, the First Source Hiring Administration may grant an exception to any or all of the requirements of Chapter 83 in any situation where it concludes that compliance with this Chapter would cause economic hardship.

e. **Liquidated Damages.** Contractor agrees:

1) To be liable to the City for liquidated damages as provided in this section;

2) To be subject to the procedures governing enforcement of breaches of contracts based on violations of contract provisions required by this Chapter as set forth in this section;

3) That the contractor's commitment to comply with this Chapter is a material element of the City's consideration for this contract; that the failure of the contractor to comply with the contract provisions required by this Chapter will cause harm to the City and the public which is significant and substantial but extremely difficult to quantify; that the harm to the City includes not only the financial cost of funding public assistance programs but also the insidious but impossible to quantify harm that this community and its families suffer as a result of unemployment; and that the assessment of liquidated damages of up to \$5,000 for every notice of a new hire for an entry level position improperly withheld by the contractor from the first source hiring process, as determined by the FSHA during its first investigation of a contractor, does not exceed a fair estimate of the financial and other damages that the

City suffers as a result of the contractor's failure to comply with its first source referral contractual obligations.

4) That the continued failure by a contractor to comply with its first source referral contractual obligations will cause further significant and substantial harm to the City and the public, and that a second assessment of liquidated damages of up to \$10,000 for each entry level position improperly withheld from the FSHA, from the time of the conclusion of the first investigation forward, does not exceed the financial and other damages that the City suffers as a result of the contractor's continued failure to comply with its first source referral contractual obligations;

5) That in addition to the cost of investigating alleged violations under this Section, the computation of liquidated damages for purposes of this section is based on the following data:

(a) The average length of stay on public assistance in San Francisco's County Adult Assistance Program is approximately 41 months at an average monthly grant of \$348 per month, totaling approximately \$14,379; and

(b) In 2004, the retention rate of adults placed in employment programs funded under the Workforce Investment Act for at least the first six months of employment was 84.4%. Since qualified individuals under the First Source program face far fewer barriers to employment than their counterparts in programs funded by the Workforce Investment Act, it is reasonable to conclude that the average length of employment for an individual whom the First Source Program refers to an employer and who is hired in an entry level position is at least one year;

Therefore, liquidated damages that total \$5,000 for first violations and \$10,000 for subsequent violations as determined by FSHA constitute a fair, reasonable, and conservative attempt to quantify the harm caused to the City by the failure of a contractor to comply with its first source referral contractual obligations.

6) That the failure of contractors to comply with this Chapter, except property contractors, may be subject to the debarment and monetary penalties set forth in Sections 6.80 et seq. of the San Francisco Administrative Code, as well as any other remedies available under the contract or at law; and violation of the requirements of Chapter 83 is subject to an assessment of liquidated damages in the amount of \$5,000 for every new hire for an Entry Level Position improperly withheld from the first source hiring process. The assessment of liquidated damages and the evaluation of any defenses or mitigating factors shall be made by the FSHA.

f. **Subcontracts.** Any subcontract entered into by Contractor shall require the subcontractor to comply with the requirements of Chapter 83 and shall contain contractual obligations substantially the same as those set forth in this Section.

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

47. Preservative-treated Wood Containing Arsenic. Contractor may not purchase preservative-treated wood products containing arsenic in the performance of this Agreement unless an exemption from the requirements of Chapter 13 of the San Francisco Environment Code is obtained from the Department of the Environment under Section 1304 of the Code. The term "preservative-treated wood containing arsenic" shall mean wood treated with a preservative that contains arsenic, elemental arsenic, or an arsenic copper combination, including, but not limited to, chromated copper arsenate preservative, ammoniacal copper zinc arsenate preservative, or ammoniacal copper arsenate preservative. Contractor may purchase preservative-treated wood products on the list of environmentally preferable alternatives prepared and adopted by the Department of the Environment. This provision does not preclude Contractor from purchasing preservative-treated wood containing arsenic for saltwater immersion. The term "saltwater immersion" shall mean a pressure-treated wood that is used for construction purposes or facilities that are partially or totally immersed in saltwater.

48. Modification of Agreement. This Agreement may not be modified, nor may compliance with any of its terms be waived, except by written instrument executed and approved in the same manner as this Agreement. Contractor shall cooperate with Department to submit to the Director of CMD any amendment, modification, supplement or change order that would result in a cumulative increase of the original amount of this Agreement by more than 20% (CMD Contract Modification Form).

49. Administrative Remedy for Agreement Interpretation. Should any question arise as to the meaning and intent of this Agreement, the question shall, prior to any other action or resort to any other legal remedy, be referred to Purchasing who shall decide the true meaning and intent of the Agreement.

50. Agreement Made in California; Venue. The formation, interpretation and performance of this Agreement shall be governed by the laws of the State of California. Venue for all litigation relative to the formation, interpretation and performance of this Agreement shall be in San Francisco.

51. Construction. All paragraph captions are for reference only and shall not be considered in construing this Agreement.

52. Entire Agreement. This contract sets forth the entire Agreement between the parties, and supersedes all other oral or written provisions. This contract may be modified only as provided in Section 48, "Modification of Agreement."

53. Compliance with Laws. Contractor shall keep itself fully informed of the City's Charter, codes, ordinances and regulations of the City and of all state, and federal laws in any manner affecting the performance of this Agreement, and must at all times comply with such local codes, ordinances, and regulations and all applicable laws as they may be amended from time to time.

54. Services Provided by Attorneys. Any services to be provided by a law firm or attorney must be reviewed and approved in writing in advance by the City Attorney. No invoices for services provided by law firms or attorneys, including, without limitation, as subcontractors of Contractor, will be paid unless the provider received advance written approval from the City Attorney.

55. Supervision of Minors. Not applicable.

56. Severability. Should the application of any provision of this Agreement to any particular facts or circumstances be found by a court of competent jurisdiction to be invalid or unenforceable, then (a) the validity of other provisions of this Agreement shall not be affected or impaired thereby, and (b) such provision shall be enforced to the maximum extent possible so as to effect the intent of the parties and

shall be reformed without further action by the parties to the extent necessary to make such provision valid and enforceable.

57. Protection of Private Information. Contractor has read and agrees to the terms set forth in San Francisco Administrative Code Sections 12M.2, "Nondisclosure of Private Information," and 12M.3, "Enforcement" of Administrative Code Chapter 12M, "Protection of Private Information," which are incorporated herein as if fully set forth. Contractor agrees that any failure of Contractor to comply with the requirements of Section 12M.2 of this Chapter shall be a material breach of the Contract. In such an event, in addition to any other remedies available to it under equity or law, the City may terminate the Contract, bring a false claim action against the Contractor pursuant to Chapter 6 or Chapter 21 of the Administrative Code, or debar the Contractor.

58. Graffiti Removal. Intentionally omitted.

59. Food Service Waste Reduction Requirements. Effective June 1, 2007, Contractor agrees to comply fully with and be bound by all of the provisions of the Food Service Waste Reduction Ordinance, as set forth in San Francisco Environment Code Chapter 16, including the remedies provided, and implementing guidelines and rules. The provisions of Chapter 16 are incorporated herein by reference and made a part of this Agreement as though fully set forth. This provision is a material term of this Agreement. By entering into this Agreement, Contractor agrees that if it breaches this provision, City will suffer actual damages that will be impractical or extremely difficult to determine; further, Contractor agrees that the sum of one hundred dollars (\$100) liquidated damages for the first breach, two hundred dollars (\$200) liquidated damages for the second breach in the same year, and five hundred dollars (\$500) liquidated damages for subsequent breaches in the same year is reasonable estimate of the damage that City will incur based on the violation, established in light of the circumstances existing at the time this Agreement was made. Such amount shall not be considered a penalty, but rather agreed monetary damages sustained by City because of Contractor's failure to comply with this provision.

60. Slavery Era Disclosure. Not Applicable.

61. Cooperative Drafting. This Agreement has been drafted through a cooperative effort of both parties, and both parties have had an opportunity to have the Agreement reviewed and revised by legal counsel. No party shall be considered the drafter of this Agreement, and no presumption or rule that an ambiguity shall be construed against the party drafting the clause shall apply to the interpretation or enforcement of this Agreement.

62. Dispute Resolution Procedure. Not applicable.

63. Airport Intellectual Property. Pursuant to Resolution No. 01-0118, adopted by the Commission on April 18, 2001, the Commission affirmed that it will not tolerate the unauthorized use of its intellectual property, including the SFO logo, CADD designs, and copyrighted publications. All proposers, bidders, contractors, tenants, permittees, and others doing business with or at the Airport (including subcontractors and subtenants) may not use the Airport intellectual property, or any intellectual property confusingly similar to the Airport intellectual property, without the Airport Director's prior consent.

64. Labor Peace / Card Check Rule. Without limiting the generality of other provisions herein requiring Contractor to comply with all Airport Rules, Contractor shall comply with the Airport's Labor Peace / Card Check Rule, adopted on February 1, 2000, pursuant to Commission Resolution No. 00-0049 (the "Labor Peace / Card Check Rule"). Capitalized terms not defined in this provision are defined in the Labor Peace/Card Check Rule. To comply with the Labor Peace/Card Check Rule, Contractor shall,

among other actions: (a) Enter into a Labor Peace/Card Check Rule Agreement with any Labor Organization which requests such an agreement and which has registered with the Airport Director or his / her designee, within thirty (30) days after Labor Peace/Card Check Rule Agreement has been requested; (b) Not less than thirty (30) days prior to the modification of this Agreement, Contractor shall provide notice by mail to any Labor Organization or federation of labor organizations which have registered with the Airport Director or his / her designee (registered labor organization"), that Contractor is seeking to modify or extend this Agreement; (c) Upon issuing any request for proposals, invitations to bid, or similar notice, or in any event not less than thirty (30) days prior to entering into any Subcontract, Contractor shall provide notice to all registered Labor Organizations that Contractor is seeking to enter into such Subcontract; and (d) Contractor shall include in any subcontract with a Subcontractor performing services pursuant to any covered Contract, a provision requiring the Subcontractor performing services pursuant to any covered Contract, a provision requiring the Subcontractor to comply with the requirements of the Labor Peace/Card Check Rule. If Airport Director determines that Contractor violated the Labor Peace/Card Check Rule, Airport Director shall have the option to terminate this Agreement, in addition to exercising all other remedies available to him / her.

65. Federal Non-Discrimination Provisions. Contractor for itself, its personal representatives, successors in interest, and assigns, as part of the consideration hereof, does hereby covenant and agree that Contractor shall maintain and operate the Airport facilities and services in compliance with all requirements imposed pursuant to Title 49, Code of Federal Regulations, DOT, Subtitle A, Office of the Secretary, Part 21, Nondiscrimination in Federally-Assisted Programs of the Department of Transportation – Effectuation of Title VI of the Civil Rights Act of 1964, as said regulations may be amended. Contractor, for itself, its personal representatives, successors in interest, and assigns, agrees that Contractor in its operation at and use of San Francisco International Airport, covenants that (1) no person on the grounds of race, color, national origin or sex shall be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of said facilities; (2) that in the construction of any improvements on, over, or under the Airport and the furnishing of services thereon, no person on the grounds of race, color, national origin or sex shall be excluded from participation or denied the benefits of, or otherwise be subject to discrimination, (3) that Contractor shall use all City premises in compliance with all other requirements imposed by or pursuant to Title 49, Code of Federal Regulations, DOT, Subtitle A – Office of the Secretary of Transportation, Part 21, Nondiscrimination in Federally-Assisted Programs of the Department of Transportation – Effectuation of Title VI of the Civil Rights Act of 1964, and as said Regulations may be amended. These Regulations are incorporated as though fully set forth herein. Contractor agrees to include the above statements in any subsequent contract that it enters into with subcontractors and cause those agreements to similarly include the statements, and cause those businesses to include the statements in further agreements.

Failure by the contractor to comply with the requirements of this section is a material breach of this contract, which may result in the termination of this contract or such other remedy as the Airport deems appropriate.

66. Use of Premises

a. **Permitted Uses.** Contractor shall use the designated office space(s) on a non-exclusive basis to perform management and administrative tasks required to coordinate the Work under this Agreement and for no other purpose. Contractor shall not place or install any office equipment and/or furniture outside the boundaries of the premises without the express written consent of the Commission.

b. **Prohibited Uses.** The designated office space(s) shall not be used except for the purposes of coordinating the services specified in Appendix A. Contractor shall not do, or cause or permit anything to be done, in or about the premises, or bring or keep anything thereon which will increase in

any way the rate of fire insurance on the premises or any of its contents; or create a nuisance; or in any way obstruct or interfere with the rights of others on the premises, or injure or annoy them; or commit or suffer to be committed any waste upon the premises; or use or allow said premises to be used, for any improper, immoral, unlawful or objectionable purposes.

67. Secured Guarantee (Performance and Payment Bonds)

a. Ten (10) working days after Notice of Award of the Contract, Contractor shall file with the City the following bonds using the form provided in Appendix E:

1. A corporate surety bond, in a sum not less than 100 percent of the Contract Sum, to guarantee the faithful performance of the Contract ("Performance Bond"); and

2. A corporate surety bond, in a sum not less than 100 percent of the Contract Sum, to guarantee the payment of labor, materials, supplies, and equipment used in the performance of the Contract ("Payment Bond").

b. Corporate sureties issuing these bonds shall be legally authorized to engage in the business of furnishing surety bonds in the State of California. All sureties shall have a current A.M. Best Rating not less than "A-, VIII" and shall be satisfactory to the City.

c. In the alternative, Contractor may secure its obligations under this Agreement in the amount of a Three Million Six Hundred Thousand dollars (\$3,600,000) Letter of Credit to be maintained over the life of the contract and in a form acceptable to the City. Should Contractor fail to perform the work as guaranteed, the full amount of the Letter of Credit shall be immediately paid to the City.


68. Prevailing Wages

a. Applicable Laws and Agreements. Compensation and working conditions for labor performed or services rendered under this Agreement shall be in accordance with the Contract Documents, the San Francisco Charter, and applicable sections of the San Francisco Administrative Code, including section 6.22(E).

b. The latest Wage Rates for Private Employment on Public Contracts in the City and County of San Francisco, as determined by the San Francisco Board of Supervisors and the Director of the California Department of Industrial Relations, and, when federal funds are involved, the current General Wage Determination Decisions, as determined by the U.S. Secretary of Labor, as same may be changed during the term of this Agreement, shall be included in this Agreement and are hereby incorporated by this reference. Contractor agrees that any person performing labor in the provision of the Work shall be paid not less than the highest general prevailing rate of wages as so determined. If federal funds are involved, where the minimum rate of pay for any classification differs among State, City and Federal wage rate determinations, the highest of the three rates of pay shall prevail. Contractor shall include, in any contract or subcontract relating to the Work, a requirement that all persons performing labor under such contract or subcontract shall be paid not less than the highest prevailing rate of wages for the labor so performed. Contractor shall require any contractor to provide, and shall deliver to City every week during the Agreement, electronic certified payroll reports with respect to all persons performing labor for this Agreement.

c. The latest prevailing wage rates are located at the following website www.dir.ca.gov/OPRL/PWD/ under San Francisco County and appropriate construction type activities.

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

CITY	CONTRACTOR
AIRPORT COMMISSION CITY AND COUNTY OF SAN FRANCISCO	By signing this Agreement, I certify that I comply with the requirements of the Minimum Compensation Ordinance, which entitle Covered Employees to certain minimum hourly wages and compensated and uncompensated time off.
By: <u>John L. Martin</u> John L. Martin, Airport Director	I have read and understood paragraph 35, the City's statement urging companies doing business in Northern Ireland to move towards resolving employment inequities, encouraging compliance with the MacBride Principles, and urging San Francisco companies to do business with corporations that abide by the MacBride Principles.
Attest:	 Authorized Signature
By: <u>Jean Caramatti</u> Jean Caramatti, Secretary Airport Commission	<u>Scott J. Silitsky</u> Printed Name
Resolution No: <u>13-0216</u>	<u>VP contract</u> Title
Adopted on: <u>Oct. 22, 2013</u>	<u>ThyssenKrupp Elevator Corp</u> Company Name
Approved as to Form:	<u>06675</u> City Vendor Number
Dennis J. Herrera City Attorney	<u>520 Townsend, Second Floor</u> Address
By: <u>Heather Wolnick</u> Heather Wolnick Deputy City Attorney	<u>San Francisco CA 94103</u> City, State, ZIP
	<u>415-544-8150</u> Telephone Number
	<u>62-121267</u> Federal Employer ID Number

Appendices

- A: Services to be provided by Contractor
- B: Calculation of Charges
- C: Equipment to be Serviced under the Contract
- D: Elevator Parts Supply List
- E: Performance Bond & Payment (Labor& Material) Bond

Appendix A
Services to be provided by Contractor

1. Definitions

- a. **Application for Payment.** Written request, including invoices, submitted by Contractor to City for payment of Work completed in accordance with the Contract Documents and approved schedule of values. Refer to Appendix B.
- b. **Contract Documents.** The Contract Documents form the entire Agreement for the Work, and consist of this Agreement and Appendices; ASME A17.1 – Safety Code for Elevators and Escalators, ASME A17.2 – Inspectors Guide for Elevators and Escalators, and ASME A17.3 – Safety Code for Existing Elevators and Escalators; and Manufacturer's System Operations Manual, Maintenance manual, and service procedures for each escalator or electric walk; all supplements, revisions, or amendments to these stated Contract Documents.
- c. **Escalator and Electric Walk Parts.** Escalator and Electric Walk parts listed in Appendix D that will be maintained at the SFIA and supplied without cost to Contractor for Work under this Agreement.
- d. **Non-conforming Work.** Work that is unsatisfactory, faulty, defective, or deficient; Work that does not conform to the requirements of the Agreement; staffing that does not conform to the requirements of the Agreement; or Work that does not meet the requirements of inspection, reference standards, tests, manufacturing manuals, or approval referred to in the Contract Documents.
- e. **Personnel.** Trained and competent personnel with the requisite amount of expertise in escalator and electric walk maintenance and repairs and with a level of supervision as necessary to perform the work required hereunder.
 - 1) **Helpers.** Each Helper shall be enrolled in a State or Federal apprenticeship program for escalator and electric walk mechanics.
 - 2) **Mechanics.** Each Mechanic shall be a qualified escalator and electric walk mechanic with a minimum of five (5) years verifiable experience in the elevator and/or escalator and electric walk trade.
 - 3) **Mechanic In Charge (MIC).** The MIC must have a minimum of ten (10) years verifiable experience as an escalator and electric walk mechanic of which a minimum of two (2) years of the ten (10) years was as a full time mechanic in charge. The MIC shall be responsible for overseeing and directing maintenance and repair services and shall be the main contact between Contractor and Commission.
- f. **Regular Work Hours:** 6:00 a.m. to 3:30 p.m., Monday through Friday, except observed holidays in accordance with the International Union of Elevator Constructors Standard Agreement, San Francisco Local 8 Union.
- g. **Service Request:** Any communication from the Commission to Contractor in an agreed upon format (phone, e-mail, facsimile, or Mainsaver work order) describing a problem with the equipment covered under this Agreement and requesting that work be performed by Contractor.

- h. **SFIA:** San Francisco International Airport, its property, divisions, employees, and representatives.
- i. **Work:** The performance by Contractor of all its responsibilities and obligations set forth in this Agreement. Work shall include, but not be limited to, providing all labor, services, and documentation required by this Agreement. References to "Work" may be to items of work.

2. Description of Services - General

Under the direction of Commission, Contractor shall be responsible for the continual maintenance, repair, annual inspection, hoist way rope replacement, load testing, and unlimited emergency repair work on all the escalators and electric walks in any buildings owned and to be owned by the Commission as listed in Appendix C of this Agreement. The Commission is continually renovating and expanding its facilities; therefore, Appendix C may be amended from time to time during this Agreement and any escalators and electric walks added to the existing list shall be included in this Agreement.

- a. The Contractor shall maintain and provide for safe reliable operation of all escalators and electric walks, including but not limited the preventative maintenance and repair duties set forth herein, replacement of all parts and components, state inspection and certification, cleaning of elevator equipment, pits, and elevator machine rooms, and evaluation of equipment operation and safety standards.
- b. Contractor shall furnish, at its own expense, all tools, equipment, supplies, diagnostic devices, personnel, and equipment necessary to maintain and provide safe reliable operation throughout the entire term of the contract and in accordance with the latest adopted editions of ASME A17.1 – Safety Code for Elevators and Escalators, ASME A17.2 – Inspectors Guide for Elevators and Escalators, and ASME A17.3 – Safety Code for Existing Elevators and Escalators.
- c. The Contractor shall be responsible for coordinating, preparing and submitting all elevator information, safety and inspection report, and any other necessary reports to the Department of Industrial Safety to obtain operating permits for all escalators and electric walks. Copies of all testing and compliance reports submitted to the Department of Industrial Safety shall also be submitted to the Commission.

3. **Service Requests.** Contractor shall respond to all Service Requests from the Commission. Service Requests may be communicated to Contractor in any manner agreed upon by both parties, but shall be documented in writing by through work orders provided by the Commission and signed by the Contractor. Such documentation shall include the date and exact time Contractor received the Service Request, the location and issue reported to Contractor.

- a. **During Regular Work Hours.** Contractor shall start work on implicated equipment within thirty (30) minutes after receiving a Service Request by Commission.
- b. **Outside of Regular Work Hours.** Contractor shall start work on implicated equipment within one and a half (1.5) hours after receiving a Service Request from Commission. The responding mechanic must sign-in at the Central Plant and sign-out when the repair work is completed.

Only authorized and properly badged employee(s) will be assigned to respond to any service call.

Contractor shall repair broken equipment and correct unsafe conditions immediately upon discovering, or receiving notice, of the breakdown of equipment or the existence of an unsafe condition whether or not

Contractor receives a Service Request from Commission.

4. Preventative Maintenance. In addition to any other work required by this Agreement, Contractor shall perform all necessary preventative maintenance required for safe reliable operation as specified by the ASME standards and in conformance with the specifications included in the Manufacturer's System Operations Manuals, Maintenance Manuals, and Service Procedures for each elevator. Contractor shall provide professional analysis of equipment operational efficiency and evaluation of current standards, practices, and procedures for extending equipment useful life.

a. Daily. Examine running unit, check for handrail damage, check handrail drive clean and adjust as necessary, check operation of stop buttons, handrail inlet switches, key start switches, and upper and lower skirt switches, check trim, inner panels, skirts for loose fastenings, correct/replace as required, check for broken comb segments, step treads or risers, replace as required, apply skirt lubrication, check lower station movement, spring length, and chain switch.

b. Monthly

- 1) Check and clean controller, check ring gear oil level (add as required), lubricate handrail drive chains, glass balustrade, and step chains, clean upper and lower end pits.
- 2) Check operation of upper and lower access cover, pit switches, check gearbox oil, clean breather.

c. Quarterly

- 1) Monthly Maintenance (listed above).
- 2) Service non-reversing device if applied, clean inside of handrail, clean guide as required, check handrail speed sensor, check brake operation and adjust if required, check motor couplings and grommets, check missing step detector and comb impact-trip force.

d. Semi-Annually

- 1) Monthly Maintenance (listed above).
- 2) Lubricate upper station main bearings, lubricate lower station bearings, and lubricate handrail drive sheave bearings if applicable.

e. Annually

- 1) Monthly Maintenance (listed above).
- 2) Check operation of broken step, out of level and step upthrust switches, change ring gear oil, clean lower end pans up through 30 degree area, clean pans and tracks of upper and lower truss, lubricate drive motor, change gear box oil, clean breather.
- 3) Annual safety test for certification of variance permit.

5. Escalator and Electric Walk Parts

Contractor has provided the Commission with a list of Escalators and Electric Walks Parts to be maintained on site by the Commission. This Escalator and Electric Walks Parts Supply List is contained in Appendix D and incorporated into this Agreement. The Commission may amend this Escalator and Electric Walk Parts Supply List in writing in its sole discretion.

Repairs may require spare parts not listed in the Escalator and Electric Walk Parts Supply List. When parts are required that are not contained in the Escalator and Electric Walk Parts Supply List (or otherwise not in stock at the SFIA), Contractor shall notify Commission and receive written approval prior to purchasing the required parts. All parts provided by Contractor shall be at cost plus a ten percent (10%) mark-up.

6. Hours and Manner of Work

Contractor shall cover the Regular Work Hours with skilled, competent, journeyman escalator and electric walk mechanics per the staffing requirements in section 5 of this Appendix A. Contractor's personnel shall comply with the sign-in and sign-out policy as implemented by the Commission, whether it is the use of a time clock device or other mechanical or paper tracking device.

The Commission must approve all overtime in advance and will pay approved overtime per the stipulated rates provided in the hourly rate schedule. Contractor will be responsible for any overtime costs to repair equipment breakdowns resulting from Contractor's failure to adequately maintain the equipment.

Contractor shall provide Commission-approved uniforms for all personnel working at SFIA and replace uniforms when required. At all times while working at SFIA, Contractor's personnel shall be in the proper uniform, keep uniform pieces in good repair, and be neat and clean in their appearance. Contractor's personnel shall maintain professional and courteous behavior while working at SFIA.

7. Minimum Staffing Requirements

Contractor shall at all times employ trained and competent personnel with the requisite amount of expertise in escalator and electric walk maintenance and repairs and with a level of supervision as necessary to perform the work required hereunder with the highest quality level for the escalator and electric walk trade for this Agreement.

To the extent Contractor elects to employ supervisors and/or mechanics who are members of a labor union, it shall be Contractor's sole responsibility to meet any and all of its obligations under any collective bargaining agreement with a union representing these personnel.

During Regular Work Hours, Contractor shall provide the following personnel:

Mechanic In Charge (1); Mechanics (4); Helpers (4)

8. Right to Inspect and Require Work

The Commission shall at all times have the right to inspect the escalators or electric walks and the work performed by Contractor. The Commission reserves the right to make such inspections and tests whenever necessary in its sole judgment in order to ascertain that the requirements of this Agreement are being fulfilled by Contractor. Any deficiencies noted by the Commission resulting from such inspections and/or test shall be promptly corrected at Contractor's sole expense.

In addition to the discretionary inspections, the Commission shall inspect all the escalators and electric walks covered under this Agreement within one hundred and eighty (180) days but no less than sixty (60) days prior to the termination of this Agreement. A written report of this inspection shall be submitted to Contractor for correction, and Contractor shall be responsible for correcting all items listed within sixty (60) days of receiving the submitted list.

9. Contractor to Comply With Laws

In the performance of the Agreement, Contractor shall abide by all existing laws, codes, rules and regulations set forth by all applicable authorities having jurisdiction over the site, including but not limited to, annual no-load safety test or before the expiration of the term of the agreement full-load safety tests of the equipment. In the event damage occurs during or as a result of said tests, Contractor is responsible for any and all corrective action that may be necessary as a result of said tests.

Contractor shall make periodic tests and service inspections of all equipment as required by the contract documents, as well as ASME A17.1 (Safety Code for Elevators and Escalators), ASME A17.2 (Inspection Guide for Elevators and Escalators), ASME A17.3 (Safety Code for Existing Elevators and Escalators), including supplement and amendments to any of these documents. Contractor shall provide written reports of said test(s) and submit said reports to the Commission. Prior to performing any safety tests, Contractor shall notify Commission so that a representative may witness said test(s) if so desired.

10. Access and Badging

Contractor and its authorized representatives and employees shall be subject to the security requirements imposed by the Commission and U.S. Transportation Security Administration (TSA) security personnel. All personnel of Contractor performing Work under this Agreement at SFIA shall be required to complete the badging process at SFIA. The requirements and procedures for obtaining an Airport badge can be found at the following web address: <https://sfoconnect.com/operations-security/airport-id-badges/obtaining-badge>. Contractor shall be responsible for all costs relating to the security check and the preparation of identification badges for each employee.

11. Vehicles

The Contractor shall provide vehicles for movement of supplies from vendors onto SFIA property and for movement of personnel to outlying areas without extra cost to the Commission.

12. Reports

a. **Daily Report.** Each day, the Contractor shall submit a work schedule indicating the equipment to be serviced that day by 7:00 a.m.; and Contractor shall submit a status report of non-operating equipment by 3:00 p.m. each day to Commission. These daily reports may be submitted verbally or in writing as determined by Commission.

b. **Weekly Report.** At the beginning of each week, Commission will provide Contractor with Preventative Maintenance Work Orders scheduled for that week. Contractor will sign and submit all completed Work Orders back to Commission at the end of each work week indicating what work was completed.

The Preventative Work Orders are for Commission's tracking purposes only. Each Preventative Work Order will outline the minimum preventative maintenance to be performed by Contractor during the week. However, it is Contractor's responsibility to provide all services necessary to keep the escalators

and electric walks safely operating in good condition and in compliance with industry standards.

c. **As Needed Reports.** Contractor shall submit any other written reports or information as requested by Commission. Format and content of such reports shall be determined by the Commission. Contractor and Commission shall agree on a reasonable time to complete and submit the report to the Commission. The reports, including any copies, shall be submitted on recycled paper and printed on double-sided pages to the maximum extent possible.

**Appendix B
Calculation of Charges**

1. HOURLY RATES

Monthly payments shall be based on the following hourly rates and charges:

Position	Straight Time	Time and One Half	Double Time
Mechanic in Charge	\$154.07	\$214.55	\$247.30
Mechanic	\$144.38	\$195.16	\$216.56
Helper (Apprentice)	\$116.29	N/A	\$176.45

All overtime hours shall be approved by the Commission in advance.

The above hourly rates include costs of labor, overhead, and profit and such items shall not be invoiced to the City. The labor rate shall be inclusive of paid holidays, vacation pay, shift work, mileage, and other fringe benefits, as outlined in the then current version of the International Union of Elevator Constructors Standard Agreement, San Francisco Local 8.

The hourly rates may be adjusted once in each calendar year to reflect increased labor costs in accordance with the current version of International Union of Elevator Constructors Standard Agreement, San Francisco Local 8 or the prevailing wage rates pursuant to this Agreement.

2. ESCALATOR AND ELECTRIC WALK PARTS

At times during this Agreement, the Commission may require the purchase of escalator and electric walk parts and related equipment that are not listed in the Escalator and Electric Walk Parts Supply List (Appendix D) or not in stock at SFIA. Contractor shall be reimbursed at cost plus ten percent (10%) mark-up for these parts or equipment. Contractor shall obtain the Commission's written approval to purchase any such part or equipment prior to purchase.

3. SPECIAL PROVISIONS

a. The Contractor shall prepare and submit monthly statements and invoices to Commission and shall be subject to audit by the Airport/City Controller and Purchasing Office.

b. The Contractor shall submit documentation of labor hours worked. This data is verified by SFIA Mainsaver which tracks all man-hours used for the preventative and corrective work done by the Contractor.

c. All work performed on all escalators and electric walks at SFIA shall be documented via Commission-provided asset management maintenance tracking forms. These reports shall be verified by the SFIA Mainsaver that the work performed was completed and inspected.

d. No monthly maintenance service invoice will be approved for payment until the scheduled preventative maintenance was done and approved by the Commission.

Appendix C
Scheduled Maintenance and
Equipment to be Serviced Under this Agreement

Unit	Asset #	STATE ID	Location	Type of Machine	Power	Manufacturer
ES-502	ESCA-00502	77880	T1, L1, near A	Escalator		Westinghouse
ES-503	ESCA-00503	78232	T1, L1, near A	Escalator	Electric D.C.	Westinghouse
ES-504	ESCA-00504	77872	T1, L2, near A	Escalator		Westinghouse
ES-505	ESCA-00505	77875	T1, L2, near A	Escalator		Westinghouse
ES-506	ESCA-00506	38740	T1, L1, near B	Escalator	Rheostat D.C.	Montgomery
ES-507	ESCA-00507	38739	T1, L1, near B	Escalator	Rheostat D.C.	Montgomery
ES-508	ESCA-00508	83516	T1, L2, near B	Escalator		Montgomery
ES-509	ESCA-00509	83517	T1, L2, near B	Escalator		Montgomery
ES-510	ESCA-00510	83887	T1, L1, near C	Escalator		Montgomery
ES-511	ESCA-00511	83886	T1, L1, near C	Escalator		Montgomery
ES-512	ESCA-00512	83904	T1, L2, near C	Escalator	Electric D.C.	Montgomery
ES-513	ESCA-00513	83903	T1, L2, near C	Escalator	Electric D.C.	Montgomery
ES-516	ESCA-00516	127056	Airtrain B	Escalator		Kone
ES-517	ESCA-00517	127057	Airtrain B	Escalator		Kone
ES-518	ESCA-00518	127074	Airtrain B	Escalator		Kone
ES-519	ESCA-00519	127058	Airtrain B	Escalator		Kone
ES-520	ESCA-00520		T1	Escalator		ThyssenKrupp
ES-521	ESCA-00521		T1	Escalator		ThyssenKrupp
ES-522	ESCA-00522		T1	Escalator		ThyssenKrupp
ES-609	ESCA-00609	127063	Airtrain D	Escalator		Kone
ES-610	ESCA-00610	127064	Airtrain D	Escalator		Kone
ES-611	ESCA-00611	127222	Airtrain D	Escalator		Kone
ES-612	ESCA-00612	127223	Airtrain D	Escalator		Kone
ES-700	ESCA-00700	64730	T3, L1	Escalator	A.C. 1,2 Speed	Otis
ES-701	ESCA-00701	64729	T3, L1	Escalator	A.C. 1,2 Speed	Otis
ES-703	ESCA-00703	64727	T3, L1	Escalator	A.C. 1,2 Speed	Otis
ES-704	ESCA-00704	64726	T3, L1	Escalator	A.C. 1,2 Speed	Otis
ES-705	ESCA-00705	64725	T3, L1	Escalator	A.C. 1,2 Speed	Otis
ES-706	ESCA-00706	64728	T3, L1	Escalator	A.C. 1,2 Speed	Otis
ES-708	ESCA-00708	64724	T3, L1	Escalator	A.C. 1,2 Speed	Otis
ES-709	ESCA-00709	64723	T3, L1	Escalator	A.C. 1,2 Speed	Otis
ES-710	ESCA-00710	64722	T3, L1	Escalator	A.C. 1,2 Speed	Otis
ES-711	ESCA-00711	64721	T3, L2	Escalator	A.C. 1,2 Speed	Otis
ES-713	ESCA-00713	64719	T3, L2	Escalator	A.C. 1,2 Speed	Otis
ES-714	ESCA-00714	64718	T3, L2	Escalator	A.C. 1,2 Speed	Otis
ES-715	ESCA-00715	64717	T3, L2	Escalator	A.C. 1,2 Speed	Otis
ES-716	ESCA-00716	64720	T3, L1	Escalator	A.C. 1,2 Speed	Otis
ES-717	ESCA-00717	64746	T3, L2	Escalator	A.C. 1,2 Speed	Otis
ES-719	ESCA-00719	64745	T3, L2	Escalator	Electric D.C.	Otis
ES-720	ESCA-00720	64743	T3, L2	Escalator	A.C. 1,2 Speed	Otis
ES-721	ESCA-00721	64744	T3, L2	Escalator	A.C. 1,2 Speed	Otis

**Appendix C
Scheduled Maintenance and**

Equipment to be Serviced Under this Agreement						
Unit	Asset #	STATE ID	Location	Machine	Power	Manufacturer
ES-740	ESCA-00740	120771	ITB	Escalator		Kone
ES-741	ESCA-00741	120772	ITB	Escalator		Kone
ES-742	ESCA-00742	120710	ITB	Escalator		Kone
ES-743	ESCA-00743	120709	ITB	Escalator		Kone
ES-744	ESCA-00744	127059	Airtrain F	Escalator		Kone
ES-745	ESCA-00745	127060	Airtrain F	Escalator		Kone
ES-746	ESCA-00746	127061	Airtrain F	Escalator		Kone
ES-747	ESCA-00747	127075	Airtrain F	Escalator		Kone
ES-1101	ESCA-01101	120591	IT, L3, SSB	Escalator		Kone
ES-1102	ESCA-01102	120590	IT, L3, SSB	Escalator		Kone
ES-1103	ESCA-01103	120589	IT, L3, SSB	Escalator	A.C. 1,2 Speed	Kone
ES-1104	ESCA-01104	120588	IT, L3, SSB	Escalator	A.C. 1,2 Speed	Kone
ES-1105	ESCA-01105	120593	IT, L3, SSB	Escalator	A.C. 1,2 Speed	Kone
ES-1106	ESCA-01106	120592	IT, L3, SSB	Escalator	A.C. 1,2 Speed	Kone
ES-1107	ESCA-01107	120608	IT, L1, SSB	Escalator		Kone
ES-1108	ESCA-01108	120607	IT, L1, SSB	Escalator		Kone
ES-1109	ESCA-01109	120586	IT, L3, SSB	Escalator		Kone
ES-1110	ESCA-01110	120587	IT, L3, SSB	Escalator		Kone
ES-1111	ESCA-01111	120603	IT, L1, NSB	Escalator		Kone
ES-1112	ESCA-01112	120604	IT, L1, NSB	Escalator		Kone
ES-1113	ESCA-01113	120601	IT, L3, NSB	Escalator		Kone
ES-1114	ESCA-01114	120602	IT, L3, NSB	Escalator		Kone
ES-1115	ESCA-01115	120606	IT, L3, NSB	Escalator	A.C. 1,2 Speed	Kone
ES-1116	ESCA-01116	120605	IT, L3, NSB	Escalator	A.C. 1,2 Speed	Kone
ES-1117	ESCA-01117	120596	IT, L3, NSB	Escalator	A.C. 1,2 Speed	Kone
ES-1118	ESCA-01118	120597	IT, L3, NSB	Escalator	A.C. 1,2 Speed	Kone
ES-1119	ESCA-01119	120595	IT, L3, NSB	Escalator		Kone
ES-1120	ESCA-01120	120594	IT, L3, NSB	Escalator	A.C. 1,2 Speed	Kone
ES-1121	ESCA-01121	120600	IT, L3, NSB	Escalator		Kone
ES-1122	ESCA-01122	120599	IT, L3, NSB	Escalator		Kone
ES-1123	ESCA-01123	120598	IT, L3, NSB	Escalator		Kone
ES-1301	ESCA-01301	120652	IT, L3, SSB	Escalator		Kone
ES-1302	ESCA-01302	120653	IT, L3, SSB	Escalator		Kone
ES-1303	ESCA-01303	120539	ITB B/A A	Escalator		Kone
ES-1304	ESCA-01304	120540	ITB B/A A	Escalator		Kone
ES-1306	ESCA-01306	120537	ITB B/A A	Escalator		Kone
ES-1307	ESCA-01307	120538	ITB B/A A	Escalator		Kone
ES-1310	ESCA-01310	120545	ITB B/A A	Escalator		Kone
ES-1311	ESCA-01311	120453	ITB B/A A	Escalator		Kone
ES-1312	ESCA-01312	120544	ITB B/A A	Escalator		Kone
ES-1313	ESCA-01313	120543	ITB B/A A	Escalator		Kone
ES-1314	ESCA-01314	120536	ITB B/A A	Escalator		Kone

**Appendix C
Scheduled Maintenance and**

Unit	Asset #	STATE ID	Location	Type of Machine	Power	Manufacturer
ES-1315	ESCA-01315	120535	ITB B/A A	Escalator		Kone
ES-1316	ESCA-01316	120551	ITB B/A A	Escalator		Kone
ES-1317	ESCA-01317	120552	ITB B/A A	Escalator		Kone
ES-1318	ESCA-01318	120574	ITB B/A A	Escalator		Kone
ES-1319	ESCA-01319	120573	ITB B/A A	Escalator		Kone
ES-1320	ESCA-01320	120542	ITB B/A A	Escalator		Kone
ES-1321	ESCA-01321	120541	ITB B/A A	Escalator		Kone
ES-1322	ESCA-01322	120567	ITB B/A A	Escalator		Kone
ES-1323	ESCA-01323	120566	ITB B/A A	Escalator		Kone
ES-1601	ESCA-01601	120720	ITB B/A G	Escalator		Kone
ES-1602	ESCA-01602	120721	ITB B/A G	Escalator		Kone
ES-1603	ESCA-01603	120501	ITB B/A G	Escalator		Kone
ES-1604	ESCA-01604	120502	ITB B/A G	Escalator		Kone
ES-1605	ESCA-01605	120521	ITB B/A G	Escalator		Kone
ES-1606	ESCA-01606	120572	ITB B/A G	Escalator		Kone
ES-1607	ESCA-01607	120503	ITB B/A G	Escalator		Kone
ES-1608	ESCA-01608	120504	ITB B/A G	Escalator		Kone
ES-1609	ESCA-01609	120506	ITB B/A G	Escalator		Kone
ES-1610	ESCA-01610	120505	ITB B/A G	Escalator		Kone
ES-1615	ESCA-01615	120509	ITB B/A G	Escalator		Kone
ES-1616	ESCA-01616	120510	ITB B/A G	Escalator		Kone
ES-1617	ESCA-01617	120508	ITB B/A G	Escalator		Kone
ES-1618	ESCA-01618	120507	ITB B/A G	Escalator		Kone
ES-1619	ESCA-01619	120515	ITB B/A G	Escalator		Kone
ES-1620	ESCA-01620	120516	ITB B/A G	Escalator		Kone
ES-1621	ESCA-01621	120518	ITB B/A G	Escalator		Kone
ES-1622	ESCA-01622	120517	ITB B/A G	Escalator		Kone
ES-1800	ESCA-01800	120732	Airtrain Gar. A	Escalator		Kone
ES-1801	ESCA-01801	120733	Airtrain Gar. A	Escalator		Kone
ES-1803	ESCA-01803	118978	Airtrain BART	Escalator		Kone
ES-1804	ESCA-01804	118979	Airtrain BART	Escalator		Kone
ES-1805	ESCA-01805	118976	Airtrain BART	Escalator		Kone
ES-1806	ESCA-01806	118977	Airtrain BART	Escalator		Kone
ES-1807	ESCA-01807	120959	Airtrain BART	Escalator		Kone
ES-1808	ESCA-01808	120960	Airtrain BART	Escalator		Kone
ES-1810	ESCA-01810	127051	Airtrain W. F.	Escalator		Kone
ES-1811	ESCA-01811	127052	Airtrain W.	Escalator		Kone
ES-1812	ESCA-01812	127055	Airtrain RCC	Escalator		Kone
ES-1813	ESCA-01813	127054	Airtrain RCC	Escalator		Kone
ES-1814	ESCA-01814	127053	Airtrain RCC	Escalator		Kone
ES-1815	ESCA-01815	116111	RCC	Escalator		Kone
ES-1816	ESCA-01816	116112	RCC	Escalator		Kone
ES-1817	ESCA-01817	116113	RCC	Escalator		Kone
ES-1818	ESCA-01818	116116	RCC	Escalator		Kone

Appendix C
Scheduled Maintenance and
Equipment to be Serviced Under this Agreement

Unit	Asset #	STATE ID	Description	Type of Machine	Power	Manufacturer
Unit	Asset #	STATE ID	Location	Type of Machine	Power	Manufacturer
ES-1819	ESCA-01819	116115	RCC	Escalator		Kone
ES-1820	ESCA-01820	116114	RCC	Escalator		Kone
EW-724	WALK-00724	133648	Terminal 3	E. Walk		Westmont
EW-725	WALK-00725	137688	Terminal 3	E. Walk		Westmont
EW-727	WALK-00727	137689	Terminal 3	E. Walk		Westmont
EW-728	WALK-00728	64954	Terminal 3	E. Walk	Electric D.C.	Otis
EW-729	WALK-00729	64953	Terminal 3		Electric D.C.	Otis
EW-730	WALK-00730	64951	Terminal 3		Electric D.C.	Otis
EW-731	WALK-00731	64952	Terminal 3		Electric D.C.	Otis
EW-744	WALK-00744	120661	ITB			Kone
EW-745	WALK-00745	120662	ITB			Kone
EW-800	WALK-00800	77873	PG1, Core A		A.C. 1,2 Speed	Westmont
EW-801	WALK-00801	77874	PG1, Core A	Moving Walk	A.C. 1,2 Speed	Westmont
EW-802	WALK-00802	42875	PG1, Core B	Moving Walk	A.C. 1,2 Speed	Westinghouse
EW-803	WALK-00803	42876	PG1, Core B	Moving Walk	A.C. 1,2 Speed	Westinghouse
EW-804	WALK-00804	83889	PG1, Core C	Moving Walk		Montgomery
EW-805	WALK-00805	83888	PG1, Core C	Moving Walk		Montgomery
EW-806	WALK-00806	42874	PG1, Core D	Moving Walk	A.C. 1,2 Speed	Westinghouse
EW-807	WALK-00807	42873	PG1, Core D	Moving Walk	A.C. 1,2 Speed	Westinghouse
EW-810	WALK-00810	111208	PG1, Core E	Moving Walk	A.C. 1,2 Speed	Westinghouse
EW-811	WALK-00811	111207	PG1, Core E	Moving Walk	A.C. 1,2 Speed	Westinghouse
EW-814	WALK-00814	111210	PG1, Core F	Moving Walk		Westmont
EW-815	WALK-00815	111209	PG1, Core F	Moving Walk		Westmont
EW-816	WALK-00816	120767	PG1, Core G	Moving Walk		Kone
EW-817	WALK-00817	120768	PG1, Core G	Moving Walk		Kone
EW-818	WALK-00818	120716	Concourse H	Moving Walk		Kone
EW-819	WALK-00819	120717	Concourse H	Moving Walk		Kone
EW-820	WALK-00820	120715	Concourse H	Moving Walk		Kone
EW-821	WALK-00821	120714	Concourse H	Moving Walk		Kone
EW-822	WALK-00822	120609	ITB PGA	Moving Walk	A.C. 1,2 Speed	Kone
EW-823	WALK-00823	120610	ITB PGA	Moving Walk	A.C. 1,2 Speed	Kone
EW-826	WALK-00826	127269	Airtrain D	Moving Walk		Kone
EW-827	WALK-00827	127268	Airtrain D	Moving Walk		Kone
EW-1401	WALK-01401	120571	ITB, B/A A	Moving Walk		Kone
EW-1402	WALK-01402	120570	ITB, B/A A	Moving Walk		Kone
EW-1403	WALK-01403	120554	ITB, B/A A	Moving Walk		Kone
EW-1404	WALK-01404	120555	ITB, B/A A	Moving Walk		Kone
EW-1405	WALK-01405	120569	ITB, B/A A	Moving Walk		Kone
EW-1406	WALK-01406	120568	ITB, B/A A	Moving Walk		Kone
EW-1701	WALK-01701	120511	ITB, B/A G	Moving Walk		Kone
EW-1702	WALK-01702	120512	ITB, B/A G	Moving Walk		Kone
EW-1703	WALK-01703	120514	ITB, B/A G	Moving Walk		Kone
EW-1704	WALK-01704	120513	ITB, B/A G	Moving Walk		Kone
EW-1705	WALK-01705	120519	ITB, B/A G	Moving Walk		Kone
EW-1706	WALK-01706	120520	ITB, B/A G	Moving Walk		Kone

Appendix D
Elevator Parts Supply List

Appendix E
Performance Bond & Payment (Labor& Material) Bond

KNOW ALL BY THESE PRESENTS, that WHEREAS, the Airport Commission of the City and County of San Francisco, State of California, has awarded to: ThyssenKrupp Elevator America, hereinafter designated as the "Principal," a Contract by RESOLUTION NO. 13-0216, adopted on October 22, 2013 for:

San Francisco International Airport Contract No. 9313

WHEREAS, said Principal is required under the terms of said Contract to furnish a Bond for the faithful performance of said Contract; and to furnish a separate Bond for the payment of any materials, provisions, or other supplies, used in, upon, for or about the performance of the Work contracted to be done;

NOW, THEREFORE, we the Principal and

as Surety, are firmly bound unto the City and County of San Francisco in the penal sum of

(PERFORMANCE BOND)

\$17,000,000

(PAYMENT BOND)

\$17,000,000

and

lawful money of the United States for the payment of which sum well and truly to be made, we bind ourselves, our heirs, executors, administrators, successors and assigns, jointly and severally firmly by these presents for a performance bond and an equal and separate penal sum for a separate payment bond. The conditions of this obligation is such that if the said principal does well and faithfully performs all the conditions and covenants of said Contract, according to the true intent and meaning thereof, upon its part to be kept and performed, then the above obligation is to be null and void, otherwise to remain in full force and effect.

(PERFORMANCE BOND)

THE CONDITION OF THIS OBLIGATION IS SUCH, that if the above bounden Principal, its heirs, executors, administrators, successors or assigns, shall in all things stand to and abide by, and well and truly keep and perform the covenants, conditions and agreements in the said Contract, including the provisions for liquidated damages in the said Contract, any changes, additions or alterations thereof made as therein provided, on its part, to be kept and performed at the time and in the manner therein specified, and in all respects according to their true intent and meaning, and shall indemnify and save harmless the City and County of San Francisco, its officers and agents, as therein stipulated, then this obligation shall become null and void; otherwise it shall be and remain in full force and effect.

Appendix E
Performance Bond & Payment (Labor& Material) Bond

(PAYMENT BOND)

THE CONDITION OF THIS OBLIGATION IS SUCH, that if said principal, its heirs, executors, administrators, successors or assigns, or its subcontractor or subcontractors, shall fail to pay (i) any of the persons named in California Civil Code Section 9100 for any materials, provisions, or other supplies, used in, upon, for or about the performance of the Work contracted to be done, or for any work or labor performed under the Contract; or (ii) amounts due the California Unemployment Insurance Code with respect to such work or labor performed under the Contract; or (iii) any amounts required to be deducted, withheld, and paid over to the state of California Employment Development Department from the wages of employees of Principal and subcontractors pursuant to Section 13020 of the California Unemployment Insurance Code with respect to such work or labor, then the Surety of this Bond will pay for the same in an amount not exceeding the sum specified in this Bond, otherwise the above obligation shall become and be null and void. In the event that suit is brought upon this Payment Bond, the parties not prevailing in such suit shall pay reasonable attorney's fees and costs incurred by the prevailing parties in such suit.

This Bond shall inure to the benefit of any of the persons named in California Civil Code Section 9100 as to give a right of action to such persons or their assigns in any suit brought against this Bond.

And the said Surety, for value received, hereby stipulates and agrees that no change, extension of time, modification, alteration or addition to the terms of the Contract or to the Work to be performed thereunder or the Specifications accompanying the same and no inadvertent overpayment of progress payments shall in any way affect its obligations on these Bonds, and it does hereby waive notice of any such change, extension of time, modification, alteration or addition to the terms of the Contract or to the Work or to the Specifications or of any inadvertent overpayment of progress payments.

IN WITNESS WHEREOF, the above-bounden parties have executed this instrument under their seal this _____ day of _____, 2013, the name and corporate seal of each corporate party being hereto affixed and these presents duly signed by its undersigned representative, pursuant to authority of its governing body.

Approved as to form:
Dennis J. Herrera
City Attorney

By:

Heather Wolnick, Deputy City Attorney

Principal

By:

Surety

By:

Appendix E
Performance Bond & Payment (Labor & Material) Bond Rider Form

Rider

Attached to and forming part of the Payment and Performance Bonds Number _____
Effective Date: _____

On behalf: _____

In favor of: City and County of San Francisco /
San Francisco International Contract No. _____

And in the amount of: \$ _____

It is understood and agreed that effective _____ the
Bond amount for each bond as it appears on the original bond is being changed:

From: \$ _____

To: \$ _____

All other conditions and terms remain as originally written.

Signed, Sealed, and Dated: _____

By: _____

The above endorsement is hereby agreed to and accepted:

By: _____

Approved as to form:

By: _____

Heather Wolnick, Deputy City Attorney

Appendix E
Performance Bond & Payment (Labor & Material) Bond

(PAYMENT BOND)

THE CONDITION OF THIS OBLIGATION IS SUCH, that if said principal, its heirs, executors, administrators, successors or assigns, or its subcontractor or subcontractors, shall fail to pay (i) any of the persons named in California Civil Code Section 9100 for any materials, provisions, or other supplies, used in, upon, for or about the performance of the Work contracted to be done, or for any work or labor performed under the Contract; or (ii) amounts due the California Unemployment Insurance Code with respect to such work or labor performed under the Contract; or (iii) any amounts required to be deducted, withheld, and paid over to the state of California Employment Development Department from the wages of employees of Principal and subcontractors pursuant to Section 13020 of the California Unemployment Insurance Code with respect to such work or labor, then the Surety of this Bond will pay for the same in an amount not exceeding the sum specified in this Bond, otherwise the above obligation shall become and be null and void. In the event that suit is brought upon this Payment Bond, the parties not prevailing in such suit shall pay reasonable attorney's fees and costs incurred by the prevailing parties in such suit.

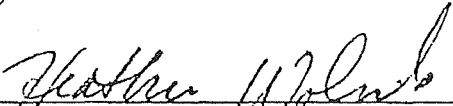
This Bond shall inure to the benefit of any of the persons named in California Civil Code Section 9100 as to give a right of action to such persons or their assigns in any suit brought against this Bond.

And the said Surety, for value received, hereby stipulates and agrees that no change, extension of time, modification, alteration or addition to the terms of the Contract or to the Work to be performed thereunder or the Specifications accompanying the same and no inadvertent overpayment of progress payments shall in any way affect its obligations on these Bonds, and it does hereby waive notice of any such change, extension of time, modification, alteration or addition to the terms of the Contract or to the Work or to the Specifications or of any inadvertent overpayment of progress payments.

IN WITNESS WHEREOF, the above-bounden parties have executed this instrument under their seal this 29th day of October, 2013, the name and corporate seal of each corporate party being hereto affixed and these presents duly signed by its undersigned representative, pursuant to authority of its governing body.

Approved as to form:
Dennis J. Herrera
City Attorney

By:


Heather Wolnick, Deputy City Attorney

ThyssenKrupp Elevator Corporation

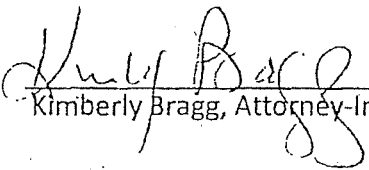
Principal

By:

Federal Insurance Company

Surety

By:


Kimberly Bragg, Attorney-In-Fact

Appendix E
Performance Bond & Payment (Labor & Material) Bond

KNOW ALL BY THESE PRESENTS, that WHEREAS, the Airport Commission of the City and County of San Francisco, State of California, has awarded to: ThyssenKrupp Elevator America, hereinafter designated as the "Principal," a Contract by RESOLUTION NO. 13-021 ~~6~~, adopted on October 15, 2013 for:

San Francisco International Airport Contract No. 9313

WHEREAS, said Principal is required under the terms of said Contract to furnish a Bond for the faithful performance of said Contract; and to furnish a separate Bond for the payment of any materials, provisions, or other supplies, used in, upon, for or about the performance of the Work contracted to be done;

NOW, THEREFORE, we the Principal and

Federal Insurance Company, 15 Mountain View Road, Warren, NJ 07059

as Surety, are firmly bound unto the City and County of San Francisco in the penal sum of

(PERFORMANCE BOND)

\$17,000,000

(PAYMENT BOND)

\$17,000,000

and

lawful money of the United States for the payment of which sum well and truly to be made, we bind ourselves, our heirs, executors, administrators, successors and assigns, jointly and severally firmly by these presents for a performance bond and an equal and separate penal sum for a separate payment bond. The conditions of this obligation is such that if the said principal does well and faithfully performs all the conditions and covenants of said Contract, according to the true intent and meaning thereof, upon its part to be kept and performed, then the above obligation is to be null and void, otherwise to remain in full force and effect.

(PERFORMANCE BOND)

THE CONDITION OF THIS OBLIGATION IS SUCH, that if the above bounden Principal, its heirs, executors, administrators, successors or assigns, shall in all things stand to and abide by, and well and truly keep and perform the covenants, conditions and agreements in the said Contract, including the provisions for liquidated damages in the said Contract, any changes, additions or alterations thereof made as therein provided, on its part, to be kept and performed at the time and in the manner therein specified, and in all respects according to their true intent and meaning, and shall indemnify and save harmless the City and County of San Francisco, its officers and agents, as therein stipulated, then this obligation shall become null and void; otherwise it shall be and remain in full force and effect.

AIRPORT COMMISSION
CITY AND COUNTY OF SAN FRANCISCO
RESOLUTION NO. 18-0326

MODIFICATION NO. 1 TO CONTRACT NO. 9313 WITH THYSSENKRUPP ELEVATOR CORPORATION FOR ESCALATOR AND ELECTRIC WALK MAINTENANCE, INCREASING THE CONTRACT NOT TO EXCEED AMOUNT BY \$2,500,000 FOR A NEW NOT TO EXCEED CONTRACT AMOUNT OF \$19,500,000 AND EXTENDING THE CONTRACT DURATION BY SIX MONTHS FOR A NEW CONTRACT END DATE OF JUNE 30, 2019

- WHEREAS, Contact No. 9313 provides needed maintenance, repair, testing, and on-call emergency services for approximately 133 escalators and 43 electric walks at the Airport; and
- WHEREAS, on May 7, 2013, this Commission adopted Resolution No. 13-0108, which authorized Staff to issue a Bid Call and negotiate with the highest ranked proposer; and
- WHEREAS, after consultation with the City Attorney's Office, it was determined that a Request for Proposals was the appropriate direction for this competitive solicitation; and
- WHEREAS, on October 22, 2013, this Commission adopted Resolution No. 13-0216, which awarded Contract No. 9313 to ThyssenKrupp Elevator Corporation in an amount of \$17,000,000 with a contract duration of five years, ending on December 31, 2018; and
- WHEREAS, on December 17, 2013, the San Francisco Board of Supervisors (BOS) adopted Resolution No. 451-13, approving the award of Contract No. 9313 to ThyssenKrupp Elevator Corporation; and
- WHEREAS, Staff proposes to extend the term six months and to increase the contract amount by \$2,500,000; and
- WHEREAS, funding for this project will be provided from the Airport's Operating funds; now, therefore, be it
- RESOLVED, that this Commission hereby approves Modification No. 1 to Contract No. 9313, Escalator and Electric Walk Maintenance, with ThyssenKrupp Elevator Corporation extending the term six months to June 30, 2019, and increasing the contract amount by \$2,500,000 for a new total contract amount not to exceed \$19,500,000; and, be it further
- RESOLVED, that the Airport Director is authorized to take the necessary steps to obtain BOS approval of Modification No. 1 pursuant to San Francisco Charter Section 9.118(b).

I hereby certify that the foregoing resolution was adopted by the Airport Commission
at its meeting of OCT 02 2018



San Francisco International Airport

MEMORANDUM

October 2, 2018

TO: AIRPORT COMMISSION
Hon. Larry Mazzola, President
Hon. Linda S. Crayton, Vice President
Hon. Eleanor Johns
Hon. Richard J. Guggenheimer
Hon. Peter A. Stern

FROM: Airport Director

SUBJECT: Modification No. 1 to Contract No. 9313 with ThyssenKrupp Elevator Corporation for Escalator and Electric Walk Maintenance

DIRECTOR'S RECOMMENDATION: APPROVE MODIFICATION NO. 1 TO CONTRACT NO. 9313 WITH THYSSENKRUPP ELEVATOR CORPORATION FOR ESCALATOR AND ELECTRIC WALK MAINTENANCE, INCREASING THE CONTRACT NOT TO EXCEED AMOUNT BY \$2,500,000 FOR A NEW NOT TO EXCEED CONTRACT AMOUNT OF \$19,500,000, AND EXTENDING THE CONTRACT DURATION BY SIX MONTHS FOR A NEW CONTRACT END DATE OF JUNE 30, 2019.

Executive Summary

Transmitted herewith for your approval is a proposed modification to Contract No. 9313, Escalator and Electric Walk Maintenance with ThyssenKrupp Elevator Corporation, to increase the contract not to exceed amount by \$2,500,000 and extend the contract duration by six months for a new contract end date of June 30, 2019. This extension is requested to align this Operating Account contract with the end of the fiscal year. Staff will be issuing a new Request for Proposals (RFP) before the end of 2018.

Background

On May 7, 2013, this Commission adopted Resolution No. 13-0108 which authorized Staff to issue a Bid Call and negotiate with the highest ranked proposer to provide maintenance, repair, testing, and on-call emergency services for approximately 133 escalators and 43 electric walks at the Airport.

After consultation with the City Attorney's Office, it was determined that a RFP was the appropriate direction for this competitive solicitation, and on July 25, 2013, Staff issued an RFP.

THIS PRINT COVERS CALENDAR ITEM NO. 14

AIRPORT COMMISSION CITY AND COUNTY OF SAN FRANCISCO

LONDON N. BREED MAYOR LARRY MAZZOLA PRESIDENT LINDA S. CRAYTON VICE PRESIDENT ELEANOR JOHNS RICHARD J. GUGGENHIME PETER A. STERN IVAR C. SATERO AIRPORT DIRECTOR

5218

On October 22, 2013, this Commission adopted Resolution No. 13-0216 awarding Contract No. 9313 to ThyssenKrupp Elevator Corporation for five years in an amount not to exceed \$17,000,000. On December 17, 2013, the San Francisco Board of Supervisors adopted Resolution No. 451-13 approving the contract.

The current contract will expire on December 31, 2018. Because the contract is operating account funded, there is a benefit in timing the new contract to start at the beginning of the fiscal year. Staff is in the process of developing a new RFP for these services for a new contract that will take effect after the expiration of the current one. Therefore, Staff is requesting an additional \$2,500,000 to cover the six-month extension to June 30, 2019.

Recommendation

Based on the above, I recommend this Commission approve Modification No. 1 to Contract No. 9313 with ThyssenKrupp Elevator Corporation for Escalator and Electric Walk Maintenance, to increase the not to exceed contract amount by \$2,500,000 for a new not to exceed contract amount of \$19,500,000, and to extend the contract duration by six months for a new contract end date of June 30, 2019.



Ivar C. Satero
Airport Director

Prepared by: Leroy P. Sisneros
Director of Facilities

Attachment



San Francisco International Airport

October 12, 2018

Ms. Angela Calvillo
Clerk of the Board
Board of Supervisors
City Hall
1 Dr. Carlton B. Goodlett Place, Room 244
San Francisco, California 94102-4689

Subject: Approval of Modification No. 1 to Award of Contract 9313 to provide for maintenance, repair, testing, and on-call emergency services for escalators and electric walks at San Francisco International Airport with ThyssenKrupp Elevator Corporation and the City and County of San Francisco, acting by and through its Airport Commission

Dear Ms. Calvillo,

Pursuant to Section 9.118 of the City Charter, I am forwarding for the Board of Supervisor's approval, the Modification No. 1 to Contract 9313 to provide for maintenance, repair, testing, and on-call emergency services for escalators and electric walks at San Francisco International Airport with ThyssenKrupp Elevator Corporation and the City and County of San Francisco, acting by and through its Airport Commission. Modification No. 1 will extend the contract 6 months (January 1, 2019 through June 30, 2019) increasing the contract amount by \$2,500,000, for a new total contract amount not to exceed \$19,500,000. The Airport Commission has approved the terms of the contract by adopting Resolution 18-0326 on October 2, 2018.

The following is a list of accompanying documents:

- Board of Supervisors Resolution;
- Approved Airport Commission Resolution No. 18-0326;
- Memorandum to the Airport Commission recommending Resolution No. 18-0326;
- Form SFEC-126 for the Board of Supervisors;
- Form SFEC-126 for Mayor Breed; and
- Copy of Original Agreement, Contract 9313
- Approval as to form of Modification No. 1 to Contract 9313 from the City Attorney's Office.

Please contact Cathy Widener, Airport Governmental Affairs at 650-821-5023 if you have any questions or concerns regarding this matter.

Very truly yours,

C. Corina Monzon
Commission Secretary

Enclosures

RECEIVED
BOARD OF SUPERVISORS
SAN FRANCISCO
2018 OCT 12 PM 1:34

AIRPORT COMMISSION CITY AND COUNTY OF SAN FRANCISCO

LONDON N. BREED MAYOR	LARRY MAZZOLA PRESIDENT	LINDA S. CRAYTON VICE PRESIDENT	ELEANOR JOHNS	RICHARD J. GUGGENHIME	PETER A. STERN	IVAR C. SATERO AIRPORT DIRECTOR
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5220

FORM SFEC-126:
NOTIFICATION OF CONTRACT APPROVAL
 (S.F. Campaign and Governmental Conduct Code § 1.126)

City Elective Officer Information <i>(Please print clearly.)</i>	
Name of City elective officer(s): Members, Board of Supervisors	City elective office(s) held: Members, Board of Supervisors

Contractor Information <i>(Please print clearly.)</i>	
Name of contractor: ThyssenKrupp Elevator Corporation	
Chief Executive Officer: Rich Hussey Chief Financial Officer: Steve Wedge Chief Operating Officer: John G. Murnane	
Please Note the following: There is no Board of Directors or any political committee's sponsored by ThyssenKrupp Elevator Corporation	
ThyssenKrupp Elevator 520 Townsend, Second Floor San Francisco CA 94103	
Date that contract was approved:	Amount of contract: Not to Exceed \$19,500,000
Describe the nature of the contract that was approved: Contract will provide for maintenance, repair, testing, and on-call emergency services for approximately 133 escalators and 43 electric walks at SFO.	
Comments:	

This contract was approved by (check applicable):

the City elective officer(s) identified on this form
 a board on which the City elective officer(s) serves San Francisco Board of Supervisors
Print Name of Board

the board of a state agency (Health Authority, Housing Authority Commission, Industrial Development Authority Board, Parking Authority, Redevelopment Agency Commission, Relocation Appeals Board, Treasure Island Development Authority) on which an appointee of the City elective officer(s) identified on this form sits

Print Name of Board

Filer Information <i>(Please print clearly.)</i>	
Name of filer: Angela Calvillo, Clerk of the Board	Contact telephone number: (415) 554-5184
Address: City Hall, Room 244, 1 Dr. Carlton B. Goodlett Pl., San Francisco, CA 94102	E-mail: Board.of.Supervisors@sfgov.org

Signature of City Elective Officer (if submitted by City elective officer)

Date Signed

Signature of Board Secretary or Clerk (if submitted by Board Secretary or Clerk)

Date Signed

