

CONTRACT

THIS AGREEMENT is made on the _____ day of _____, 2017, between the CITY OF ANN ARBOR, a Michigan municipal corporation, 301 East Huron Street, Ann Arbor, Michigan 48104 ("City"), and Schindler Elevator Corporation, a(n) Delaware corporation, 20 Whippany Road, Morristown, New Jersey 07960 ("Contractor").

Based upon the mutual promises below, the Contractor and the City agree as follows:

ARTICLE I - Scope of Work

The Contractor agrees to furnish all of the materials, equipment and labor necessary; and to abide by all the duties and responsibilities applicable to it for the project titled Elevator Modernization Project RFP #17-16, as described in Exhibit A, in accordance with the requirements and provisions of the following documents, including all written modifications incorporated into any of the documents, which are incorporated as part of this Contract:

- Contract and Exhibits
- Addendum to Contract
- General Conditions
- Standard Specifications
- Detailed Specifications
- Plans
- Addenda to RFP #17-16
- Bid Forms
- Bonds
- Non-discrimination and Living Wage Declaration of Compliance Forms
- Prevailing Wage Declaration of Compliance Form
- Vendor Conflict of Interest Form

ARTICLE II - Definitions

Administering Service Area/Unit means **Public Services Area, Fleet & Facilities Unit**

Contract Administrator means **Public Services Area Administrator or designee**. As used in the General Conditions, "Supervising Professional" means Contract Administrator.

Project means **RFP #17-16 – Elevator Modernization Project**

ARTICLE III - Time of Completion

- (A) The work to be completed under this Contract shall begin immediately on the date specified in the Notice to Proceed issued by the City.
- (B) The entire work for the elevator in Fire Station #1 portion of this Contract shall be completed within one hundred eighty (180) consecutive calendar days from the Notice to Proceed, and the entire work for the elevator in City Hall portion of this Contract shall be completed within two hundred forty (240) consecutive calendar days from the Notice to Proceed.

- (C) The time out of service for the elevator in Fire Station #1 shall not exceed forty-two (42) calendar days, and the time out of service for the elevator in City Hall shall not exceed eighty-four (84) calendar days.
- (D) Failure to return either elevator to service within the time specified above for that elevator, including any extension granted in writing by the Contract Administrator, shall constitute a material breach of contract, and shall obligate the Contractor to pay the City, as liquidated damages and not as a penalty, an amount equal to \$250.00 for each calendar day of delay in returning the elevator to service. Liquidated damages are separate and cumulative for each elevator. If any liquidated damages are unpaid by the Contractor, the City shall be entitled to deduct these unpaid liquidated damages from the monies due the Contractor as a setoff. Neither party will be liable to the other for special, indirect, or consequential damages.

The liquidated damages are for the non-quantifiable aspects of any of the previously identified events and do not cover actual damages that can be shown or quantified nor are they intended to preclude recovery of actual damages in addition to the recovery of liquidated damages.

ARTICLE IV - The Contract Sum

- (A) The Contractor shall be paid in the manner set forth in Exhibit B. Payment shall be made monthly, unless another payment term is specified in Exhibit B, following receipt of invoices submitted by the Contractor, and approved by the Contract Administrator.
- (B) The amount paid shall be equitably adjusted to cover changes in the work ordered by the Contract Administrator but not required by the Contract Documents. Increases or decreases shall be determined only by written agreement between the City and Contractor.

ARTICLE V - Assignment

This Contract may not be assigned or subcontracted any portion of any right or obligation under this contract without the written consent of the City. Notwithstanding any consent by the City to any assignment, Contractor shall at all times remain bound to all warranties, certifications, indemnifications, promises and performances, however described, as are required of it under this contract unless specifically released from the requirement, in writing, by the City.

ARTICLE VI - Choice of Law

This Contract shall be construed, governed, and enforced in accordance with the laws of the State of Michigan. By executing this agreement, the Contractor and the City agree to venue in a court of appropriate jurisdiction sitting within Washtenaw County for purposes of any action arising under this Contract. The parties stipulate that the venue referenced in this Contract is for convenience and waive any claim of non-convenience.

Whenever possible, each provision of the Contract will be interpreted in a manner as to be effective and valid under applicable law. The prohibition or invalidity, under applicable law, of any provision will not invalidate the remainder of the Contract.

ARTICLE VII - Relationship of the Parties

The parties of the Contract agree that it is not a Contract of employment but is a Contract to accomplish a specific result. Contractor is an independent Contractor performing services for the City. Nothing contained in this Contract shall be deemed to constitute any other relationship between the City and the Contractor.

Contractor certifies that it has no personal or financial interest in the project other than the compensation it is to receive under the Contract. Contractor certifies that it is not, and shall not become, overdue or in default to the City for any Contract, debt, or any other obligation to the City including real or personal property taxes. City shall have the right to set off any such debt against compensation awarded for services under this agreement.

ARTICLE VIII - Notice

All notices given under this Contract shall be in writing, and shall be by personal delivery or by certified mail with return receipt requested to the parties at their respective addresses as specified in the Contract Documents or other address the Contractor may specify in writing. Notice will be deemed given on the date when one of the following first occur: (1) the date of actual receipt; or (2) three days after mailing certified U.S. mail.

ARTICLE IX - Indemnification

To the fullest extent permitted by law, Contractor shall indemnify, defend and hold harmless the City, its officers, employees and agents harmless from all suits, claims, judgments and expenses including attorney's fees resulting or alleged to result, in whole or in part, from any act or omission, which is in any way connected or associated with this Contract, by the Contractor or anyone acting on the Contractor's behalf under this Contract. Contractor shall not be responsible to indemnify the City for losses or damages caused by or resulting from the City's sole negligence. The provisions of this Article shall survive the expiration or earlier termination of this contract for any reason.

ARTICLE X - Entire Agreement

This Contract represents the entire understanding between the City and the Contractor and it supersedes all prior representations, negotiations, agreements, or understandings whether written or oral. Neither party has relied on any prior representations in entering into this Contract. No terms or conditions of either party's invoice, purchase order or other administrative document shall modify the terms and conditions of this Contract, regardless of the other party's failure to object to such form. This Contract shall be binding on and shall inure to the benefit of the parties to this Contract and their permitted successors and permitted assigns and nothing in this Contract, express or implied, is intended to or shall confer on any other person or entity any legal or equitable right, benefit, or remedy of any nature whatsoever under or by reason of this Contract. This Contract may be altered, amended or modified only by written amendment signed by the City and the Contractor.

[signatures on following page]

FOR CONTRACTOR

By _____

Its: _____

FOR THE CITY OF ANN ARBOR

By _____

Christopher Taylor, Mayor

By _____

Jacqueline Beaudry, City Clerk

Approved as to substance

Howard S. Lazarus, City Administrator

Craig Hupy, Public Services Area
Administrator

Approved as to form and content

Stephen K. Postema, City Attorney

**EXHIBIT A
SCOPE OF WORK**

(Insert/Attach Scope of Work & Deliverables Schedule)

EXHIBIT B COMPENSATION

General

Contractor shall be paid for those Services performed pursuant to this Agreement inclusive of all reimbursable expenses (if applicable), in accordance with the terms and conditions herein. The Compensation Schedule below/attached states nature and amount of compensation the Contractor may charge the City:

See attached price proposal from Contractor.

Contractor will provide the City with a Schedule of Values for use when Contractor submits invoices for payment,

The cost for the Fire Station #1 elevator modernization, including one year of preventive maintenance services (visits at least quarterly, or as required by the manufacturer if more frequent), and the first annual Fire Service test required after the State certificate of operation is issued, shall not exceed \$93,011.00.

The cost for the City Hall elevator modernization, including one year of preventive maintenance services (visits at least quarterly, or as required by the manufacturer if more frequent), and the first annual No Load test required after the State certificate of operation is issued, shall not exceed \$286,899.00.

If the City requires that any work be performed on overtime, through no fault of Contractor, the additional cost of any such overtime shall be added to the contract price pursuant to appropriate change orders.

(insert/Attach Negotiated Fee Arrangement)