



**Office of  
General Services**

**Procurement  
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**New York State**  
**Contract # PS924AA**

*(for State use only)*

**CENTRALIZED CONTRACT FOR**

**ELEVATOR, ESCALATOR & MISCELLANEOUS LIFT EQUIPMENT  
PREVENTIVE AND CORRECTIVE MAINTENANCE (STATEWIDE)**

**BETWEEN**

**THE NEW YORK STATE OFFICE OF GENERAL SERVICES**

**AND**

**OTIS ELEVATOR COMPANY**

**THIS AGREEMENT** (hereinafter the “Contract,” “Centralized Contract,” “Master Contract” or the “Agreement”) is made by and between the People of the State of New York, acting by and through the Commissioner of General Services, whose office is on the 41st Floor, Corning Tower Building, Governor Nelson A. Rockefeller Empire State Plaza, Albany, New York 12242 (hereinafter referred to as the “State” or the Office of General Services (“OGS”)) and Otis Elevator Company having its principal place of business at 20 Loudonville Rd., Albany, NY 12204 (hereinafter referred to as the “Contractor”). OGS and the Contractor are collectively referred to as the “Parties.”

**WHEREAS**, OGS is statutorily authorized to enter into Centralized Contracts for services for use by Authorized Users; and

**WHEREAS**, OGS has identified a need by Authorized Users for Elevator, Escalator and Miscellaneous Lift Equipment Preventive and Corrective Maintenance (Statewide), as further described herein; and

**WHEREAS**, OGS provided notification of availability of a multi-award non-competitive periodic recruitment Solicitation for vendors that provide Elevator, Escalator and Miscellaneous Lift Equipment Preventive and Corrective Maintenance by placing a notice in the October 19, 2016 edition of the New York State Contract Reporter; and

**WHEREAS** the Solicitation was structured with four (4) separate lots, dependent upon the type of equipment being serviced, and eleven (11) separate geographic regions; and

**WHEREAS**, this Centralized Contract sets forth a two-step process for each transaction. The first step is the establishment of the Centralized Contract, through a non-competitive periodic recruitment process. The second step is competitive, and is based on the development of a specific Project Definition by an Authorized User in accordance with the Centralized Contract terms. The Project Definition will then be distributed to Contractors based on specific regions, via the Mini-Bid process, with award being made based on best value. The Mini-Bid award will result in a Mini-Bid Agreement; and

**WHEREAS**, OGS has determined that the Contractor submitted a responsive proposal for the Lot(s) and Region(s) awarded, that the maximum not-to-exceed prices proposed by Contractor are reasonable, that the Contractor is a responsible vendor, and that the Contractor is willing to provide the Elevator, Escalator and Miscellaneous Lift Equipment Preventive and Corrective Maintenance Services identified in Attachment 1, *Summary of Lots and Regions Awarded*, under the terms and conditions contained herein;

**NOW THEREFORE**, in consideration of the terms hereinafter mentioned and also the mutual covenants and obligations moving to each party hereto from the other, the Parties hereby agree as follows:

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## **APPENDICES AND ATTACHMENTS**

### **APPENDICES**

Appendix A - Standard Clauses for New York State Contracts (January 2014)  
Appendix B - General Specifications (May 2015)  
Appendix C - Contract Modification Procedure  
Appendix D - Mini-bid Project Definition Template  
Appendix E - How to Use Instructions

### **ATTACHMENTS**

Attachment 01 – Summary of Lots and Regions Awarded  
Attachment 02 - Contractor’s Insurance Requirements  
Attachment 10 – OGS MWBE Quarterly Reporting form

## **SECTION 1 INTRODUCTION**

### **1.1 Scope**

This Contract is executed by the New York State Office of General Services (OGS), a New York State (NYS) agency authorized by law to issue Centralized Contracts for use by NYS Agencies and other Authorized Users.

This document is a Centralized Contract that establishes a set of standardized terms and conditions, guidelines, and a template for the provision of preventive and corrective maintenance services for Lift Equipment, including provisions for the supply and installation of material and equipment, in accordance with the ASME A17.1, *Safety Code for Elevators and Escalators*, A17.2 *Inspectors Guide for Elevators and Escalators*, and A17.3 *Safety Code for Existing Elevators and Escalators* (including supplements) collectively hereinafter referred to as ASME A17; and A18.1, *Safety Standard for Platform Lifts and Stairway Chairlifts* hereinafter referred to as ASME A18 to NYS Authorized Users, by Lot and Region. The safety practices and procedures contained in the latest version of the “Elevator Industry Field Employees’ Safety Handbook” published by Elevator World and available at <http://safety.elevatorworld.com/handbook.php>, shall also be followed when performing preventive and corrective maintenance.

Further information regarding Regions, Lots, and Pricing can be found in the following sections: Sections 1.3, *List of Regions*, 1.4, *List of Lots*, and 2.7, *Centralized Contract Pricing*. The specific Lots and Regions awarded to Contractor may be found in Attachment 1 – *Summary of Lots and Regions Awarded*.

The Contractor agrees to the terms and conditions set forth in this Centralized Contract and the Contractor is willing to provide such services as set forth herein to Authorized Users.

This Centralized Contract sets forth a two-step process for each transaction. The first step was the establishment of this Centralized Contract. The second step will be competitive, based on the development of a specific Project Definition by an Authorized User in accordance with the contractual terms. The need for Elevator, Escalator and Miscellaneous Lift Equipment Preventive and Corrective Maintenance will be identified by an Authorized User, and documented in a Project Definition. The Project Definition will then be distributed to Contractors based on specific Regions, via the Mini-bid process. A Mini-bid award shall be based on best value.

The Mini-bid award will result in a Mini-bid Agreement for Elevator, Escalator and Miscellaneous Lift Equipment Preventive and Corrective Maintenance between Contractor and the Authorized User. Each Mini-bid Agreement will be governed by the terms and conditions specified herein and by terms and conditions added to the Authorized User Mini-bid Agreement.

A ‘Mini-bid Project Definition Template’ and ‘How to Use Instructions’ are attached to this document as Appendix D and Appendix E, respectively.

This Solicitation also contains a provision for periodic recruitment which allows the State to accept additional proposals after the initial award. Periodic recruitment will be performed at the option of the State when it is determined to be in the State’s best interests, and is discussed further in Section 3.14 *Periodic Recruitment*.

**1.2 Estimated Quantities**

This Contract is an Indefinite Delivery, Indefinite Quantity (IDIQ) contract. All quantities or dollar values listed within this Contract are estimates.

Numerous factors could cause the actual volume of sales under the Contract to vary substantially from the estimates in the Contract. Such factors include, but are not limited to, the following:

- This Contract is a nonexclusive Contract;
- There is no guarantee of volume to be purchased, nor is there any guarantee that demand will continue in any manner consistent with previous purchases;
- The individual value of the Contract is indeterminate and will depend upon actual Authorized User demand, and actual quantities ordered during the Contract period; and,
- The State reserves the right to terminate the Contract for cause or convenience prior to the end of the term pursuant to the terms and conditions of the Contract.

In OGS Procurement Services’ experience, depending on the price of a particular item, the actual volume of purchases for that item could be substantially in excess of, or substantially below, estimated volumes. Specifically, if actual Contract pricing is lower than anticipated or historical pricing, actual quantities purchased could be substantially greater than the estimates; conversely, if actual Contract pricing is higher than anticipated or historical pricing, actual quantities purchased could be substantially lower than the estimates. Contractor acknowledges the foregoing and agrees that actual good faith purchasing volumes during the term of the Contract could vary substantially from the estimates provided in this Contract.

The historical dollar value of all contracts awarded under the previous award (Group 71004, Award 20304) was approximately \$4 million per year for all Authorized Users.

**1.3 List of Regions**

The Regions specified in Attachment 1 *Summary of Lots and Regions Awarded* are within the scope of this Contract. Descriptions of all Regions included in the Solicitation are set forth below.

<b>Region</b>	<b>Applicable Counties</b>
Region No. 1 - Long Island Region	Nassau and Suffolk
Region No. 2 - New York Region	Bronx, Kings, New York, Queens and Richmond
Region No. 3 - Lower Hudson Valley Region	Orange, Putnam, Rockland and Westchester
Region No. 4 - Hudson Valley Region	Dutchess, Sullivan and Ulster Counties
Region No. 5 - Capital Region	Albany, Columbia, Greene, Rensselaer, Saratoga, Schenectady and Schoharie
Region No. 6 - North Country Region	Clinton, Essex, Warren and Washington Counties
Region No. 7 - Mohawk Valley/North Country Region	Franklin, Fulton, Hamilton, Herkimer, Lewis, Madison, Montgomery, Oneida and St. Lawrence
Region No. 8 - Central New York Region	Cayuga, Cortland, Jefferson, Onondaga and Oswego
Region No. 9 - Southern Tier Region	Broome, Chemung, Chenango, Delaware, Otsego, Schuyler, Steuben, Tioga and Tompkins
Region No. 10 - Finger Lakes Region	Genesee, Livingston, Monroe, Ontario, Orleans, Seneca, Wayne, Wyoming and Yates
Region No. 11 - Western New York	Alleghany, Cattaraugus, Chautauqua, Erie and Niagara

**1.4 List of Lots**

The Lots specified in Attachment 1 *Summary of Lots and Regions Awarded* are within the scope of this Contract. Descriptions of all Lots included in the Solicitation are set forth below.

- Lot 1: Traction Elevator Equipment (Geared and Gearless Traction Elevators);
- Lot 2: Hydraulic Elevator Equipment;
- Lot 3: Escalator Equipment; and
- Lot 4: Miscellaneous Lift Equipment (Dumbwaiters, Wheelchair Lifts, Stage Lift Elevators).

Definitions for each type of equipment are set forth in section 1.5 *Definitions*.

Contract PS924AA, Otis Elevator Company

## 1.5 Definitions

In addition to the terms defined in Appendix B, Section 2, Definitions, the following terms shall have the following meanings:

“**ASME**” shall mean the most current version of the American Society of Mechanical Engineers provision that is cited.

“**Authorized User’s Representative**” shall mean the authorized representative of an Authorized User that is identified as such in a Mini-bid Project Definition and/or in the contract(s) entered into under this Solicitation.

“**Best Value**” shall mean the basis for awarding contracts for services to the offerer which optimizes quality, cost and efficiency, among responsive and responsible offerers. Such basis shall reflect, wherever possible, objective and quantifiable analysis. Such basis may also identify a quantitative factor for offerers that are small businesses or certified minority- or women-owned business enterprises as defined in subdivisions one, seven, fifteen and twenty of section three hundred ten of the executive law to be used in evaluation of offers for awarding of contracts for services.

“**Bidder**” shall refer to any business entity who submits a response to the Solicitation. At the time that the Bidder executes a contract with the State for their services a Bidder shall become a “Contractor.” See also “Contractor”.

“**Business Hours**” shall mean Monday through Friday, between the hours of 7:00 A.M. and 5:00 P.M. EST, except New York State Holidays unless otherwise specified by the Authorized User.

“**Callback Service Report**” – A report provided to the Authorized User by the Contractor documenting an instance of Emergency Callback Service and describing the reason for the callback, actions taken to address the callback and any further actions and/or repairs that may be necessary.

“**Centralized Contract**” shall refer to the portion of this document that precedes the signature of the parties, including any appendices and attachments incorporated by reference. Also referred to as a Backdrop Contract.

“**Centralized Contract Price**” shall mean the maximum not to exceed prices awarded for the Centralized Contract.

“**Corrective Maintenance**” shall mean Repair and/or Replacement services as defined in this Solicitation and shall be performed anytime the preventative maintenance, test or inspection identifies equipment and parts that have failed or are worn out. The Contractor shall bring back to working order, equipment or parts malfunctioning or damaged, due to wear-and-tear, or failure detected during regular preventative maintenance, tests or inspections.

“**Corrective Maintenance Report**” – A report provided to the Authorized User by the Contractor documenting Corrective Maintenance work performed and describing the work performed, the materials used in the work, the labor provided and a summary of the cost of the work.

“**Dumbwaiter**” – A small freight elevator that is intended to carry objects other than passengers.

“**Elevator Downtime Report**” – A report provided to the Authorized User by the Contractor documenting the condition of an Elevator which has been taken out of service. This report describes the condition of the Elevator, the reason it was taken out of service, the proposed repairs which are required to restore the elevator and the proposed schedule for the repairs.

“**Emergency Callback Service**” – This refers to a service provided by the Contractor 24-hour-a-day, 7 days-a-week, as defined in See 2.8 *Callback Service*.

“**Escalator**” - A moving staircase that is used to transport pedestrians between floors and consists of a motor driven chain of individual, linked steps that are attached to a continuously circulating belt.

“**Facility Working Days**” - shall mean the days of the week and the length of such working days that an Authorized User indicates for a particular facility in its Mini-bid Project Definition.

“**Full Service Contract**” - shall mean that the Contractor's fees and markup rates include all labor and materials required to provide the preventive and corrective elevator maintenance services outlined in this Contract and subsequent Mini-bid Agreements, which includes, but is not limited to all labor, all materials and supplies, all emergency work and special requests; all administrative, reporting or other requirements, all overhead costs and profit, all travel costs, freight, parking fees, and any other ancillary fees and costs including permits, licenses, insurance, etc.

**“Geared Traction Elevator”** - An elevator, typically powered by an electric motor, which utilizes traction to propel the elevator with the use of worm gears or a gearbox.

**“Gearless Traction Elevator”** - An elevator, typically powered by an electric motor, which utilizes traction to propel the elevator without the use of worm gears or a gearbox.

**“Hydraulic Elevator”** - An elevator which uses hydraulics to propel the elevator. Hydraulic elevators may utilize either an underground cylinder (Conventional), an above ground cylinder (Holeless) or a combination of ropes and above ground cylinders (Roped).

**“Lift Equipment”** shall refer to Geared Traction Elevators, Gearless Traction Elevators, Hydraulic Elevators, Escalators, Stage Lifts, Wheelchair Lifts and Dumbwaiters collectively.

**“Maintenance”** as per ASME A17.1 is a process of routine examination, lubrication, cleaning, and adjustment of parts, components, and/or subsystems for the purpose of ensuring performance in accordance with the applicable Code requirements.

**“Maintenance Control Program (MCP)”** shall mean a written plan outlining all required inspection, testing and maintenance work for the equipment covered under this Solicitation . See Section 2.6 ‘*Maintenance Control Program*’. The Maintenance Control Program may also be referred to as a Maintenance Control Plan.

**“May”** denotes the permissive in a Contract clause or specification. Refers to items or information that the State has deemed are worthy of obtaining, but not required or obligatory. Also see “Should”.

**“Major Corrective Maintenance”** means the Corrective Maintenance that exceeds the Major/Minor Corrective Maintenance Thresholds specified in Section 2.4 *Corrective Maintenance*.

**“Mini-bid Agreement”** shall refer to the resulting agreement from the competitive bidding of each Authorized User’s Mini-Bid Project Definition which is used to solicit bids from Centralized Contract holders and is used as a basis for any resulting contracts.

**“Mini-bid Price”** means the prices awarded for a Mini-bid Agreement. A Mini-bid Price shall not exceed the Centralized Contract Price.

**“Mini-bid Project Definition”** shall refer to a statement of need which is used during the Mini-bid process to describe the Lift Equipment Preventive and Corrective Maintenance Services that are being sought by an Authorized User.

**“Minor Corrective Maintenance”** means Corrective Maintenance calculated according to the requirements of and is less than the Major/Minor Corrective Maintenance Threshold specified in Section 2.4 *Corrective Maintenance*.

**“Miscellaneous Lift Equipment”** shall refer to Stage Lifts, Wheelchair Lifts and Dumbwaiters.

**“Must”** denotes the imperative in a Contract clause or specification. Means required - being determinative/mandatory, as well as imperative. Also see “Shall” and “Mandatory”

**“MWBE”** shall refer to a business certified by New York State Empire State Development (ESD) as a Minority and/or Women-owned Business Enterprise.

**“NYS Vendor ID”** shall refer to the ten-character identifier issued by New York State when a vendor is registered in the Vendor File.

**“On-site”** refers to any space owned or leased by the Authorized User or which is open to the public at which the Authorized User’s business operations are conducted.

**“Overtime”** shall be defined as set forth in Labor Law Section 232.

**“Pre-Maintenance Repair Services”** are corrective maintenance services to be performed at the start of an awarded Mini-bid Agreement to bring the equipment back to good working order or into compliance with the Code. Pre-Maintenance Repairs are identified using the last inspection report issued by the Qualified Elevator Inspector, the list of known deficiencies provided by the Authorized User or may be discovered during pre-bid inspections.



**“Preventative Maintenance Service”** shall mean the process of inspection, routine examination, lubrication, cleaning and adjustment of parts, components, and/or subsystems for the purpose of ensuring acceptable performance in accordance with applicable ASME Code requirements, the manufacturer’s specifications, and the specifications defined in this Contract.

**“Procurement Services”** shall refer to the division of the New York State Office of General Services which is authorized by law to issue centralized, statewide contracts for use by Authorized Users.

**“Qualified Elevator Inspector (OEI)”** – An elevator inspector certified in accordance with ASME QEI-1 ‘*Standard for Qualified Elevator Inspectors*’.

**“Repair”** as per ASME A17.1 is the reconditioning or renewal of parts, components, and/or subsystems necessary to keep equipment in compliance with applicable Code requirements.

**“Repair Item”** shall refer to an individual part, component or subsystem that receives Corrective Maintenance.

**“Repair Services”** shall mean the reconditioning or renewal of parts, components, and/or subsystems necessary to keep the Lift Equipment in compliance with applicable Code requirements and the manufacturer’s specifications.

**“Replacement Services”** as per ASME A17.7 shall mean the substitution of a device or component and/or subsystems in its entirety, with a unit that is basically the same as the original for the purpose of ensuring performance in accordance with applicable Code requirements and the manufacturer’s specifications. **“Shall”** denotes the imperative in a Contract clause or specification. Means required - being determinative/mandatory, as well as imperative. Also see **“Must”**.

**“Service”** means provision of labor and/or materials and all ancillary costs for the performance of preventative or corrective maintenance.

**“Service Facility”** means the Contractor-operated, physical location where the Contractor’s elevator mechanics report.

**“Should”** denotes the permissive in a Contract clause or specification. Refers to items or information that the State has deemed are worthy of obtaining, but not required or obligatory. Also see **“May”**.

**“State Agency Authorized User”** denotes an Authorized User who is a State Agency, as defined in Executive Law §310(11).

**“Stage Lift Elevator”** - Stage Lift Elevators are specialized elevators, typically powered by hydraulics, that are used to raise or lower entire sections of a theatre stage.

**“Wheelchair Lift”** - A fully powered device used to raise a wheelchair and its occupant to overcome a step or similar vertical barrier or to transport a wheelchair and its occupant between floors of a building.

**SECTION 2 SPECIFICATIONS**

All work performed under this Contract and subsequent Mini-bid Project Definitions shall be performed in accordance with the following sections.

**2.1 General Requirements**

This is a Full Service Contract, as defined in Section 2.8 Definitions. The table below is a summary of services to be provided under the Contract.

**Table 1: Summary of Services & Fees**

Applicable Fee	Applicable Services
Monthly Maintenance Fee (Section 2.7.1)	Preventative Maintenance (Section 2.3) Minor Corrective Maintenance (Section 2.4) Maintenance Control Program (Section 2.6) Call-back Service (Section 2.8) Notification of Conditions Requiring Repair (Section 2.9) Safety Inspections and Tests, excluding Fire Service Testing (Section 2.10) Contract Meetings (Section 2.11) Inspection of Work (Section 2.17) Access for Repairs (Section 2.18) Staffing for Scheduled Building Shutdowns (Section 2.18) On-Site Mechanic, if required by the Mini-bid Project Definition (Section 2.18), <i>See Note 1 below</i> Reports (Sections 2.12 and 2.29) Documentation and Recordkeeping (Section 2.19) Preparation of As-Built Drawings for Equipment, Wiring and Circuit Changes (Section 2.24) Preparation of Schematic Wiring Diagrams (Section 2.25), <i>See Note 1 below</i> Contractor Closeout Inspections (Section 2.26)
Fire Service Testing Fee (Section 2.7.2)	Fire Service Testing (Section 2.7.2)
Labor & Material Markup Rates (Section 2.7.3)	Major Corrective Maintenance (Section 2.4) Pre-Maintenance Repairs (Section 2.28)

*Note 1: The requirements for an ‘On-Site Mechanic’ and ‘Preparation of Schematic Wiring Diagrams’ may not be included in all Mini-bid Project Definitions. For Mini-bid Project Definitions that do not require these services, the costs should be removed from the price bid for the Monthly Maintenance Fee in order to provide the most competitive bid.*

**2.2 Maintenance Requirements**

All Lift Equipment shall be maintained at its initial performance ability (same speed, safety, and efficiency) as originally specified by the equipment manufacturer or most recent upgrade specifications. All work shall be done in accordance with the requirements of these specifications and the latest adopted editions of ASME A17.1, Safety Code for Elevators and Escalators, A17.2 Inspectors Guide for Elevator and Escalators and A17.3 Safety Code for Existing Elevators and Escalators (including supplements) hereinafter referred to as ASME A17; and A18.1-Safety Standard for Platform Lifts and Stairway Chairlifts. The safety practice and procedures in the “Elevator Industry Field Employees Safety Handbook” shall also be followed when performing maintenance and repairs.

An Authorized User shall identify the Lift Equipment to be serviced in the Mini-bid Project Definition. The Contractor shall be responsible for inspecting, maintaining and repairing the Lift Equipment identified and all associated components not specifically listed that are supplemental to and a part of the operation of the overall Lift Equipment. Prospective Contractors shall personally verify all Lift equipment listed in the Mini-bid Project Definition during the mandatory site visit.

Should a Mini-bid Project Definition include any freight elevators that are authorized to carry passengers, such elevators shall be inspected and maintained as a passenger elevator.

**2.3 Preventive Maintenance**

Preventive Maintenance services, as referred in Section 1.5 Definitions, are the process of inspection, routine examination, lubrication, cleaning and adjustment of parts, components, and/or subsystems for the purpose of ensuring acceptable performance in accordance with applicable ASME Code requirements and the manufacturer’s specifications. The Contractor’s not-to-exceed Monthly Maintenance Fee price shall include the cost of all labor, materials and supplies to meet the preventive maintenance requirements including, but not necessarily limited to, the preventive maintenance requirements contained in the manufacturer’s specifications, ASME A.17 and ASME A.18.1. It shall also include the preparation of Maintenance Control Programs, all non-billable call back service work and special requests, all ASME required Elevator testing and inspections and all administrative and reporting requirements.

As part of the preventive maintenance requirements the Contractor shall also be responsible for maintaining the lighting fixtures installed in the car, hoist way, pit, car top, and car emergency lighting including all lighting fixture components such as ballasts, bulbs, lamps, and tubes; and is also responsible for maintaining the car telephone or intercommunication systems from elevator to elevator controller. In addition, the Contractor is responsible for replacing lamps and bulbs for the lighting fixtures in the elevator equipment room, but is not responsible for the ballasts or fixtures in that room.

**2.4 Corrective Maintenance**

Corrective Maintenance as referred to herein shall mean Repair and/or Replacement Services.

For the purposes of evaluating whether Corrective Maintenance qualifies as either Minor or Major Corrective Maintenance, the Contractor shall calculate the total cost of the Corrective Maintenance in accordance with the following formulas, and the cost shall be calculated per Repair Item which shall be compared to the Major/Minor Corrective Maintenance Threshold listed in Table 2.

Total Cost of Repair Item = (Labor Cost) + (Material Cost)

Where:

Labor Cost = (H) x [(1 + LMR/100) x (PWR + SB)]

H = Number of labor hours needed to complete the Corrective Maintenance

LMR = Labor Markup Rate (%)

PWR = Prevailing Wage Rate

SB = Supplemental Benefits

Material Cost = (Cost of Materials) x (1 + MMR/100)

Where:

MMR = Materials Markup Rate (%)

The Contractor’s Monthly Maintenance fee shall include, but is not necessarily limited to, all preventative maintenance service and all corrective maintenance service with a total cost (labor and materials) less than or equal to the thresholds listed in the following table, which shall be referred to as ‘Minor Corrective Maintenance:

**Table 2: Corrective Maintenance Thresholds**

Lot(s)	Type of Equipment	Major/Minor Corrective Maintenance Threshold
1	Gearless Traction Elevators	\$2500
1	Geared Traction Elevators	\$2500
2	Hydraulic Elevators	\$1000
3	Escalators	\$2500
4	Wheelchair Lifts	\$500
4	Stage Lifts	\$500
4	Dumbwaiters	\$500

Corrective maintenance work that has a Total Cost that exceeds these thresholds shall be considered Major Corrective Maintenance. The Contractor shall justify all costs for Major Corrective Maintenance to the Authorized User's satisfaction, and for Repair Items that qualify as Major Corrective Maintenance the Contractor shall be compensated for the full cost of the work unless the corrective maintenance is determined to be the result of the Contractor's negligence, in which case the Contract shall not be additionally compensated.

Prior to performing any Major Corrective Maintenance, the Contractor shall submit a Cost Proposal to the Authorized User for approval. The Cost Proposal shall be a maximum, not to exceed price; shall include all labor and material costs associated with the Major Corrective Maintenance and shall be calculated on a per item basis (like items shall not be combined in the calculation).

Upon approval, a letter authorizing the work will be issued by the Authorized User and a copy of such letter must accompany the invoice for the Major Corrective Maintenance services. Please note that if subcontractors are to be used, the requirements of Section 2.22 'Subcontracting of Work' shall be met.

### **2.5 Work Not Included in Contract (Out of Scope Work)**

The Contractor is not responsible for performing the following work:

- a. Refinishing of the elevator car interior walls, elevator car interior ceiling, elevator car floor covering, and escalator balustrades, trim and moldings;
- b. Maintenance and repair of lighting ballasts and fixtures in the elevator equipment room, except for the replacement of lamps or bulbs which is included;
- c. Maintenance and repair of hoist way enclosure walls, hoist way door frames and hoist way sills;
- d. Maintenance and repair of telephone company lines with the exception of elevator telephone or intercommunication systems which are included;
- e. Maintenance and repair of main line power switches; and
- f. Maintenance and repair of emergency power plants and associated supplies.

### **2.6 Maintenance Control Program (MCP)**

Within fourteen (14) days after award of a Mini-bid Project Definition, the Contractor shall submit to the Authorized User a Maintenance Control Program (MCP) for review and approval. The MCP shall be prepared in accordance with the requirements of the manufacturer's specifications, ASME A.17 and ASME A18.1 and shall include monthly reporting to the Authorized User. The MCP shall cover a period of at least twelve months, or the term of the Mini Bid Agreement, if fewer than 12 months, and shall be updated and resubmitted annually on the anniversary date of the award of the Mini-bid Agreement, or on a more frequent basis if agreed to by the Authorized User and the Contractor.

The approved MCP shall include, but not be limited to, the following:

- a. The MCP shall articulate all required work in accordance with the manufacturer's recommendations and applicable ASME Standards in such a format that the Authorized User Representative and/or any lay person (a non-elevator expert) can understand the required tasks and be able to monitor whether or not the required tasks are being performed at the required intervals and to the required specifications.
- b. The MCP shall include all tests and inspections (including Fire Service Testing).
- c. The MCP shall document Minor and Major Corrective Maintenance activities.
- d. The MCP shall include the minimum number of preventive maintenance hours of service to be provided per month for each elevator.
- e. The MCP shall reflect the 12-month Mini-bid Project Definition cycle, beginning upon Mini-bid Agreement or the entire term of the Mini-bid Agreement, if fewer than 12 months.

As part of the Maintenance Control Program, the Contractor shall submit, to the Authorized User, monthly MCP Status Reports showing progress made towards completion of the tasks contained in the MCP.

In addition, the Authorized User may specify minimum maintenance requirements in the Mini-bid Project Definition which the Contractor shall incorporate into the MCP.

## 2.7 Centralized Contract Pricing

Centralized Contract Prices can be found in Attachment 1 – *Summary of Lots and Regions Awarded*.

Centralized Contract Prices include a Monthly Maintenance Fee, Fire Service Testing Fee, Labor Markup Rate and Materials Markup Rate in Lots 1 and 2 and a Monthly Maintenance Fee, Labor Markup Rate and Materials Markup Rate in Lots 3 and 4.

Centralized Contract Prices include the cost of meeting all specifications set forth. The Centralized Contract Prices are the maximum rates that the Contractor can bid during subsequent Mini-bid Project Definitions; however a Contractor may submit lower pricing in response to a Mini-bid Project Definition. *Please note that the requirements for an ‘On-Site Mechanic’ and ‘Preparation of Schematic Wiring Diagrams’ may not be included in all Mini-bid Project Definitions. For Mini-bid Project Definitions that do not require these services, the costs should be removed from the price bid for the Monthly Maintenance Fee in order to provide the most competitive bid.*

For all pricing, the Monthly Maintenance Fee, Fire Service Testing Fee (if applicable), Labor Markup Rate and Materials Markup Rate bid during the Mini-bid Project Definition shall be less than or equal to the corresponding prices awarded for the Centralized Contract.

### 2.7.1 Monthly Maintenance Fee

The Contractor agrees to provide a ‘*Monthly Maintenance Fee*’ for the performance of preventive maintenance services and Minor Corrective Maintenance services. Preventive Maintenance and Minor Corrective Maintenance services are defined in Section 2.3 ‘*Preventive Maintenance*’ and Section 2.4 ‘*Corrective Maintenance*’ respectively.

### 2.7.2 Fire Service Testing Fee

For Lots 1 and 2 the Contractor agrees to provide a ‘*Fire Service Testing Fee*’ for the performance of the monthly “manual test” of the Phase I and Phase II Fire Service Testing as required by ASME A17.1. This fee shall be on a per month basis per Elevator and shall include all costs associated with performance of the tests. This testing shall be performed by the Contractor and the results shall be submitted along with the monthly Maintenance Control Program status reports, however the Authorized User reserves the right to remove this testing from the scope of work for facilities where it can be performed by in-house staff, in which case no fee will be charged by the Contractor.

### 2.7.3 Labor and Material Markup Rates

The Contractor agrees to provide a percent markup rate for labor, designated as the ‘*Labor Markup Rate*’ and a percent markup rate for materials, designated as the ‘*Materials Markup Rate*’ for the assessment of value of Corrective Maintenance, and for the performance of Major Corrective Maintenance repairs. For labor the percent markups will be offered over the then-current New York State prevailing wage rates plus supplemental benefits in the county in which the work is performed for Elevator Mechanics and Helpers, and the prevailing wage rates and supplemental benefits paid will be the current rates listed for the date the work is performed in the county in which the work is performed:

The Labor Markup Rate shall include all costs (such as salary payments in excess of the prevailing wage rate, benefits, overhead, profit, training, recruitment, etc.) and no additional compensation will be allowed in addition to the Labor Markup Rate bid.

For materials, the percent markup will be offered over the actual cost of the materials used in the work. The *Materials Markup Rate* shall include all costs (such as overhead, profit, etc.) and no additional compensation will be allowed in addition to the markup bid.

### Cost of Materials

When procuring materials for Major Corrective Maintenance work, the following guidelines shall apply:

1. The Contractor shall submit detailed invoices for all materials with their cost proposals for Major Corrective Maintenance.
2. The Contractor shall procure materials using commercially reasonable and prudent practices to obtain the most favorable price and terms. The Contractor will make his/her best efforts to obtain favorable pricing and shall document same by obtaining written quotes from at least three (3) responsible sources before selecting the best price and terms using the following guidelines:
  - i. Each quote will be solicited in a form and manner conducive to uniformity in all quotes. The Contractor will maintain documentation of the solicitation and results.
  - ii. If the Contractor desires to accept other than the lowest priced materials, or where competitive bids are not possible, adequate justification must be provided to the Authorized User for required prior approval.
  - iii. The Authorized User shall be free to accept or reject any material costs submitted for approval, and the Contractor shall provide the Authorized User with copies of all documentation requested in relation to such approval rights.

### 2.8 Callback Service

The Contractor agrees to provide 24-hour-a-day, 7 day-a-week callback service which shall be included in the cost of the Monthly Maintenance Fee. Should a callback occur outside of Business Hours, resulting in the actual payment of Overtime to an employee, reimbursement will be made for the use of Overtime in accordance with Section 2.21 'Overtime' unless

1. The callback is due to the fault or negligence of the Contractor, which shall be determined by the Authorized User, in which case no additional Overtime reimbursement will be made and the service costs will be deemed fully covered by the Monthly Maintenance Fee, or
2. The callback is made pursuant to Section 2.8(a), in which case additional Overtime reimbursement will be made without preapproval.

The Authorized User will provide the Contractor with a list of individuals who are authorized to call for Emergency Callback Services and the Contractor shall provide the Authorized User with the names and telephone numbers (home, cellular, and office) of the persons to be contacted for service. Both parties shall keep this list updated as required.

In the event of callback service, a journeyman elevator mechanic will report to the site of the call when requested by the Authorized User or those persons designated by the Authorized User, in accordance with the following schedule:

- a. Within one (1) hour after receipt of request for any stalled Lift Equipment containing trapped passenger or any Lift Equipment designated in the Mini-bid Project Definition as being essential. In the event a passenger is trapped in stalled Lift Equipment, the procedures specified in the ASME A17.4, 'Guide for Emergency Evacuation of Passengers from Elevators' shall be followed.
- b. Within the first two (2) regular work hours of the next regular working day for any of the other Lift Equipment covered by the Mini-bid Project Definition.
- c. For each callback service call, the Contractor shall provide the Authorized User a 'Callback Report' within the timeframe specified in Section 2.12 'Deliverables'. The 'Callback Report' shall include a copy of the work ticket(s) along with supporting documentation, the format of which shall be approved by the Authorized User in advance of the first submittal. Callback Reports shall contain the following minimum information:
  - (a) Name and address of the Contractor
  - (b) Name of the Contractor's employee in charge of the work
  - (c) Name of the Contractor's employee(s) performing the work.
  - (d) Date(s) work performed and work hours expended
  - (e) Brief description of work performed/corrective action including equipment identification
  - (f) Signature and name of the Contractor's employee authorized to sign for the Contractor and attest to the necessity and completeness of the work, and the accuracy of the invoice.

## **2.9 Notification of Conditions Requiring Repair**

The Contractor shall give immediate notice to the Authorized User Representative of any apparent damage, defects or repairs required to the Lift Equipment covered under the resulting Mini-bid Project Definition. This notice shall consist of both verbal notification on the day of discovery and written notice within three days thereof.

In addition, for any conditions the Contractor interprets to be excluded from Contract under Section 2.5 *Work Not Included in Contract*, the Contractor shall notify the Authorized User Representative, verbally on the day of discovery, and shall follow-up in writing no later than three (3) days thereof, informing of the existence or development of any defects in, or repairs required to, the Lift Equipment. The Authorized User reserves the right to solicit offers from, and have corrections or repairs made by, other sources for work outside the scope of the resulting contract(s).

## **2.10 Safety Inspections and Tests (Excluding Fire Service Testing)**

All inspection and testing services identified in this section shall be included in Contractor's Monthly Maintenance Fee. No additional costs will be paid for inspections and testing outside of the Monthly Maintenance Fee, except for Fire Service Testing.

The Contractor shall perform all periodic inspections and tests for the Lift Equipment, in accordance with the requirements of ASME A17 and ASME A18, and all such inspections/tests shall be witnessed by the Authorized User's approved Qualified Elevator Inspector (QEI).

The Contractor shall submit the schedule for all tests and inspections to the Authorized User Representative and the QEI, within fifteen (15) days of the commencement of the resulting Mini-bid Project Definition. All tests and inspections shall also be included in the Maintenance Control Program.

The Authorized User Representative shall schedule the inspections and tests based on the date the last inspection and test were performed in each one of the Lift Equipment. The Contractor will be allowed a fifteen (15) day timeframe from the date of the last inspection and test are due. The periodic inspections and tests shall be conducted during Business Hours unless otherwise approved by the Authorized User. Tests that require building shutdown will be scheduled outside of normal Business Hours with the Authorized User's authorization.

The Contractor shall provide skilled and competent mechanics to perform the tests and inspections, in accordance with the staff requirements. The tests and inspections shall be witnessed by the Authorized User's approved QEI, and the QEI shall determine if the mechanics provided by the Contractor are competent to perform the job. If the QEI determines that the mechanics are not competent to do the job, then the Authorized User Representative will be contacted and the Contractor shall be required to change the staff.

Should there be any delay of more than one-half (1/2) hour during testing, the Contractor is required to immediately contact the Authorized User Representative, and failure to do so will result in the Contractor being responsible for the Authorized User's employees use of time, and the costs of the QEI (as determined by the contract rates between the Authorized User and QEI).. Otherwise the QEI services shall be paid for separately by the Authorized User.

## **2.11 Contract Meetings**

1. The Contractor will be responsible for the completion of a variety of administrative and reporting requirements, and the cost of same will be included in the Monthly Maintenance Fee.
2. Upon award of a Mini-bid Agreement and prior to the start of any work, the Contractor shall be available for an initial job meeting with the Authorized User Representative. This meeting shall include:
  - A. The Contractor's submission of the Maintenance Control Program to be reviewed and approved by the Authorized User.
  - B. A review of all Authorized User facility use rules.
  - C. An introduction for each respective Authorized User organization, chain of command, etc.
3. Unless otherwise directed by the Authorized User, there shall be monthly job meetings for the following purposes:
  - A. Review job progress, quality of work, and approval and delivery of materials.
  - B. Identify and resolve problems that impede planned progress.
  - C. Coordinate the efforts of all concerned so that the Mini-bid Project Definition progresses on schedule to on time completion.
  - D. Maintain a sound working relationship between the Contractor and the Authorized User, and a mutual understanding of the Mini-bid Project Definition requirements.
  - E. Maintain sound working procedures.

**2.12 Deliverables**

The Contractor shall provide the following plans, services, requests and reports to the Authorized User Representative within the timeframe shown below. For definitions of the reports contained in this table see Section 1.5 ‘Definitions’.

<b>Deliverable</b>	<b>Date of submission and/or completion of work</b>	<b>Frequency</b>
Maintenance Control Program (MCP)	14 (fourteen) calendar days after award of a Mini-bid Agreement or as otherwise agreed to by the parties and on each anniversary date of the award	See Section 2.6 ‘Maintenance Control Program’
Completion of Pre-Maintenance Repair Services (if applicable)	30 (thirty) days after award of a Mini-bid Agreement or as otherwise agreed to by the parties	Once at the start of a Mini-bid Agreement, unless otherwise stated in the Mini-bid Project Definition
Request to Work Outside of Normal Facility Business Hours	5 (five) days prior to the performance of the service	On demand
Monthly MCP Status Report, invoices for Monthly Maintenance Fee, Fire Service Testing (if applicable) and Major Corrective Maintenance Services	Fifth day of each month	Monthly (invoices may be sent separately for each item)
Completion of ASME Inspections and Testing	Within fifteen (15) days from the deadline from the performance of the last inspection or test performed.	Scheduled according to ASME A17 & ASME A18 requirements
ASME Inspection and Testing Report	Within five (5) calendar days after completion of the inspection and testing	Scheduled according to ASME A17 & ASME A18 requirements
Correction of deficiencies/violations identified by the Qualified Elevator Inspector	Within thirty (30) days after the report is received from the Authorized User Representative	On demand
Corrective Maintenance Report	Within five (5) calendar days after completion of the Corrective Maintenance	Monthly
Elevator Downtime Report	Twenty four (24) hours after the Elevator is out of service.	On demand
Callback Report	Within three (3) working days after completion	On demand

**2.13 Liquidated Damages**

If the Contractor fails to complete services in accordance with these specifications, within the times specified herein or in the applicable Mini-bid Project Definition, it is understood, and the Contractor hereby agrees that, because of the immeasurability of the damages the Authorized User would suffer because of such a breach the below provisions will determine the Contractor’s liability therefore, not as a penalty, but as liquidated damages.

For purposes of this Section 2.13 the ‘Daily Rate’ shall be calculated by dividing the number of working days in the respective month (“Monthly Working Days”) into the ‘Monthly Maintenance Fee’ and multiplying the result by a fraction, the numerator of which shall be the number of Elevators, escalators or Miscellaneous Lift Equipment subject to diminution of use at the Facility and the denominator of which shall be the number of Elevators, escalators or Miscellaneous Lift Equipment at the premises covered by the resulting Contract(s). The Authorized User shall identify its working days and the length of such working days (e.g., 7:a.m.-6:00 p.m.) in the Mini-bid Project Definition.



Daily Rate Formula:

Daily Rate =  $\frac{\text{Monthly Maintenance Fee}}{\text{Monthly Working Days}} \times \frac{\text{Number(s) of Lift Equipment. Subject to Diminution}}{\text{Total Number of Lift Equipment Under Contract}}$

Example: Facility X has 15 elevators. During the month of September 2015, the Contractor failed in providing service to two elevators during the entire month. There are 21 working days in the month of September. The contract monthly maintenance fee is \$ 12,000.00.

Daily Rate =  $(\$12,000/21) \times (2/15) = \$75.19$

1. **LIQUIDATED DAMAGES FOR FAILURE TO RESPOND TO EMERGENCY CALLBACK SERVICE:** If the Contractor fails to timely respond to callback service as required in this Contract or any Mini-bid Project Definitions issued hereunder, deductions will be made, from future monthly invoice(s), at a rate of \$100.00, per incident, to compensate the State for the loss of use of the Lift Equipment and the inconvenience created thereby. Any additional costs incurred by the Facility Representative as a result of acquiring the services of an alternate elevator maintenance company, due to the failure of the Contractor to timely respond to callback service, will also be deducted from the monthly invoice. The Authorized User Representative will notify the Contractor of failure to respond to a request for callback service and will deduct the appropriate withholding amount from future monthly invoice(s).

2. **LIQUIDATED DAMAGES FOR FAILURE TO MAINTAIN AND/OR PROVIDE SPARE PARTS:** If the Contractor fails to provide any of the parts covered in this Contract or any Mini-bid Project Definitions issued hereunder within 24 hours of establishment of need for such parts, the Authorized User will deduct the ‘Daily Rate’ (see Daily Rate Formula above) from future invoice(s) for every day until the parts are received, to compensate the Authorized User for the loss of use of the Lift Equipment and the inconvenience created thereby. For this purpose, parts shall be considered those parts needed for “normal wear and tear” or “small” parts. The Authorized User’s Representative shall make the final determination, and will notify the Contractor of any failure to provide parts and will deduct the appropriate withholding amount from future monthly invoice(s).

3. **LIQUIDATED DAMAGES FOR FAILURE TO PROVIDE REQUIRED PREVENTIVE MAINTENANCE:** If the Contractor fails to timely complete required preventive maintenance tasks, in accordance with the approved Maintenance Control Plan, this Contract or any Mini-bid Project Definitions issued hereunder, the applicable manufacturer’s preventative maintenance recommendations or the ASME codes, the Authorized User’s Representative will notify the Contractor and will deduct two (2) times the Daily Rate (see Daily Rate Formula above) from future monthly invoice(s), to compensate the State for the diminution of services, for each and every day beyond the required maintenance performance period until such time that the work is complete and accepted by the Authorized User Representative. For example, if the maintenance item is due to be performed monthly and was not performed during the scheduled calendar month, but was performed on the 10th day of the next month, the Contractor would be assessed 9 days of liquidated damages for the period of non-compliance. Provided, however, that in the case of periodic tasks that are never performed by the time that the next performance period ends, liquidated damages assessment will cease for the prior performance period when the next performance period ends.

4. **LIQUIDATED DAMAGES FOR FAILURE TO COMPLETE MAINTENANCE DEFICIENCIES AS CITED BY THE STATE QUALIFIED ELEVATOR INSPECTOR:** If the Contractor fails to timely correct maintenance deficiencies as identified by the State’s Qualified Elevator Inspector/Inspection Report, by the sooner of the time periods set forth in the State’s Qualified Elevator Inspector/Inspection Report or 30 days from Contractor’s receipt from the Authorized User Representative of the Qualified Elevator Inspector’s inspection report, the Authorized User Representative will notify the Contractor and deduct two (2) times the Daily Rate (see Daily Rate Formula above) from future monthly invoice(s), to compensate the State for the diminution of services, for each and every day beyond the due date until such time that the work is complete and accepted by the Authorized User Representative.

5. **LIQUIDATED DAMAGES FOR EXCESS UNSCHEDULED LIFT EQUIPMENT DOWN-TIME:** Lift Equipment cannot experience unscheduled down-time of more than six Facility working days per contract year per piece of Lift Equipment unless the Contractor’s failure to place the Lift Equipment back into service arises out of causes beyond the Contractor’s control and without the fault or negligence of the Contractor (i.e. acts of God, the public enemy, fires, floods, freight embargoes, regulated utilities delays, etc.). If Lift Equipment is down longer than the acceptable amount of time specified above, the Excess Lift Equipment Downtime Liquidated Damages Formula below will determine the Contractor’s liability therefore, not as a penalty, but as liquidated damages.

The Contractor's liability for such liquidated damages shall be the product of three factors: (i) the yearly contract costs; times (ii) a fraction, the numerator of which shall be the number of Lift Equipment subject to diminution of use at the premises and the denominator of which shall be the number of Elevators, escalators or other equipment at the premises covered by the contract; times (iii) a fraction, the numerator of which shall be the number of days of unscheduled down time in excess of the threshold six Facility working days per year per elevator/escalator and the denominator of which shall be the number of days in the year that the Facility is in operation. Unscheduled down time of less than 50% of the Authorized User's working days as identified in the Mini-bid Project Definition shall not be charged against the Contractor; and down time of 50% or more of the Authorized User's working days as identified in the Mini-bid Project Definition shall be counted as a full day. "Yearly contract cost" as used herein shall mean the fixed maintenance cost payable by the Authorized User for the contract year in which said damages are sustained, including any escalations from prior years, but shall not include extra charges properly billed by the Contractor under this Agreement. If such damages occur in a period that is partly in one contract year and partly in another, the damages assessable in each such year shall be separately computed using the appropriate yearly contract cost for such each portion.

This liquidated damages clause shall be in addition to all other liquidated damages clauses in this Contract once the Lift Equipment experiences unscheduled down-time of more than six Facility working days per year per piece of Lift Equipment. Unscheduled down-time means the length of time that the Lift Equipment is out-of-service for reasons other than the down-time previously scheduled by the Contractor and agreed to by the Authorized User (e.g. time for tests or inspections). The length of time that Lift Equipment is out-of-service shall be measured by the Authorized User; beginning at such time the Authorized User notifies the Contractor that the Lift Equipment is out-of-service or that an unsafe condition exists and ending at such time the Lift Equipment is safely placed back into service.

Excess Lift Equipment Downtime Liquidated Damages (EEDLD) Formula:

$$\text{EEDLD} = (\text{contract yearly amount}) \times \frac{\text{\# of Lift Equipment out of service}}{\text{Total Number of Lift Equipment under this Contract}} \times \frac{\text{Number of days out of service in excess of six Facility working days}}{\text{Annual Working Days}}$$

Example: Facility Y has 16 elevators. During the month of January 2014, elevator number 8 was out of service the entire month. The contract yearly amount is \$ 60,000. There were 22 Facility working days in January; therefore there were 16 days of excess elevator downtime in January. There were 260 Facility working days in 2014.

$$\text{EEDLD} = \$60,000 \times (1/16) \times (16/260) = \$230.77$$

6. **LIQUIDATED DAMAGES FOR FAILURE TO TIMELY SUBMIT THE MAINTENANCE CONTROL PLAN (MCP) FOR APPROVAL:** If the Contractor fails to timely submit the MCP to the Authorized User Representative for approval, the Authorized User Representative will notify the Contractor and deduct one (1) time the Daily Rate (see above Daily Rate Formula) per Elevator, Escalators or other Lift Equipment from future monthly invoices for each and every day late until such time that the MCP is submitted to the Authorized User Representative for approval. The MCP is the support documentation used by the Authorized User Representative to certify that the maintenance service had been performed. In addition to the assessment of liquidated damages, the non-submittal the MCP will also result in a suspension of payments for the preventive maintenance monthly fee.

7. **LIQUIDATED DAMAGES FOR FAILURE TO TIMELY PERFORM REQUIRED ASME SCHEDULED TESTS:** If the Contractor fails to timely perform all required tests and inspections, in compliance with Section 2.10 'Safety Inspection and Tests', except for causes beyond the Contractor's control and without the fault or negligence of the Contractor (i.e. acts of God, the public enemy, fires, floods, freight embargoes, regulated utilities delays, etc.), the Contractor will be assessed liquidated damages to compensate the State for the inconvenience and potential liabilities resulting from Contractor's untimely performance. The liquidated damages shall be equal to two (2) times the Daily Rate (see above Daily Rate Formula) for each and every day beyond the due date until such time that the tests or inspections are complete and accepted by the Authorized User Representative. Such liquidated damages shall be deducted from future monthly invoice(s).

8. **GENERAL:** In the event that the Contractor's performance results in the possibility of assessing multiple types of liquidated damages for a piece of equipment for the same time period, with the exception of liquidated damages for excessive unscheduled down time under subdivision 5 above which shall be in addition to all others, only one type of liquidated damages will be assessed for that piece of equipment for the subject time period. Provided, however that the type of liquidated damages to be assessed for that period shall be the one that would yield the largest amount of liquidated damages payment to the Authorized User.

### 2.14 Invoices and Monthly Payments

Invoices shall be submitted monthly and shall consist of one invoice for the Monthly Maintenance Fee and Fire Service Testing Fee (if applicable), and a separate invoice for Major Corrective Maintenance services.

All invoices for the Monthly Maintenance Fee shall be accompanied by the monthly Maintenance Control Program Status Report. All invoices for Major Corrective Maintenance shall be accompanied by the work tickets, material invoices and the authorization letter documenting the work. This invoice will contain the Contract ID number; the name of the Authorized User; the location where service was performed; and, either in its body or as an attachment, will contain a copy of the report (in accordance with the reporting requirements specified in section 7.29 itemizing work completed during that month).

Payment for any invoices which are submitted without acceptable supporting documentation may be withheld at the discretion of the Authorized User.

The monthly payment for services covered shall be calculated by adding the Monthly Maintenance Fee, Fire Service Testing Fee and Major Corrective Maintenance labor and materials costs and then subtracting any Liquidated Damages.

Should a Contractor be subjected to Liquidated Damages, such damages will be calculated and assessed to the Contractor's next monthly payment or other future invoice at the discretion of the Authorized User, and disputes regarding Liquidated Damages shall result in the withholding of payment until the dispute is settled.

### 2.15 Performance Evaluations

The Contractor's performance shall be monitored by the Authorized User to ensure that all work is performed in accordance with these specifications and/or the specifications established in a Mini-bid Project Definition. In cases of poor contract performance, an Authorized User shall submit a deficiency report using the Performance Survey to the Office of General Services. Should a Contractor receive three deficiency reports from Authorized Users documenting unsatisfactory performance, OGS reserves the right to suspend the Contractor from participating in future Mini-bids in either a specific facility, region or on a statewide basis at the discretion of the Commissioner.

Benchmarks for evaluating the Contractor's performance include, but are not limited to, the following items:

1. Completion of the scheduled preventative and corrective maintenance as specified by the manufacturer's recommendations, ASME A17.1 and ASME A18.1.
2. Completion of work check charts and the MCP report for the Lift Equipment.
3. Timely completion of all work required as a result of maintenance deficiencies noted as a result of the Authorized User's Qualified Elevator Inspector (QEI) testing/inspections or maintenance auditing. The maintenance deficiencies shall be completed within thirty (30) working days of the receiving date of the testing/inspection report from the QEI. Within three (3) working days of said test/inspection, Contractor shall provide the Authorized User Representative a schedule and a proposal, if applicable, which includes but is not limited to; outlining the required scope of work and start and completion dates for the work.
4. Down-time of not more than six Facility Working Days per year per piece of Lift Equipment. Down-time means the length of time that a piece of Lift Equipment is out-of-service. The length of time that a piece of Lift Equipment is out-of-service shall be measured by the Authorized User Representative; beginning at such time the Authorized User Representative notifies the Contractor that the Lift Equipment is out-of-service or that an unsafe condition exists and ending at such time the Lift Equipment is safely placed back into service. In the event that Contractor is delayed beyond Contractor's control in being able to place the Lift Equipment back into service, Contractor shall provide the Authorized User Representative two forms of documentation proving that such delay is beyond Contractor's control. An example of acceptable documentation may be written statements from two independent suppliers of a particular part(s) that are not readily available, and accompanied by a shipping date of such availability. Upon verification, Authorized User Representative may interrupt the total "down-time" duration. The "down-time" is exclusive of acts of God and vandalism.
5. Responsiveness to Emergency Callback Services placed by the Authorized User Representative or his/her designee, in compliance with the timeframe established on section 2.8 '*Callback Service*'.

6. The Contractor's failure to repair or correct deficiencies detected during the performance of the preventative maintenance or reported to the Contractor by the Authorized User Representative.

### **2.16 On-Site Work**

Services performed on-site by Contractor's employees, subcontractors or agents shall be rendered in accordance with the following requirements:

1. The Contractor shall be completely responsible for all performed work, including the work of all subcontractors, including any damages or breakdowns caused by the failure to take appropriate action.
2. The Contractor is responsible for taking all necessary precautions to avoid damage to the Authorized User's equipment or facilities. Should any damage occur due to the Contractor's operations, the Contractor shall immediately notify the Authorized User Representative, and shall repair/replace the damaged property at the Contractor's own expense.
3. The Contractor is required to follow all applicable facility rules and regulations.
4. The Contractor's Elevator mechanics, helpers, subcontractors and their associated personnel shall follow all check in/check out procedures, including the signing of building logs when required, in accordance with the Facility's procedures and guidelines. Failure to follow check in/check out procedures, whether intentional or not, may be understood to mean that services were not performed.
5. The Authorized User will not be liable for any expense incurred by the Contractor as a consequence of any traffic infraction or parking violations attributable to employees of the Contractor.
6. No illegal drug use of any type, or alcoholic beverages by the Contractor or its personnel shall be permitted in the performance of the contract.
7. The Authorized User Representative reserves the right to reject and bar from their facilities any employee hired by the Contractor for legitimate reasons including, but not limited to, performance or security based issues.
8. All Lift Equipment machine rooms, hoist ways, pits, and Lift Equipment will be kept free of dust, dirt, grease, oil, and foreign debris to the extent possible as to not pose a safety or operational hazard.
9. The Contractor shall keep all Material Safety Data Sheets (MSDS) on file with the Authorized User Representative, or designee, for all commonly used products and shall provide a separate listing of the 1-800 emergency telephone numbers for all products.
10. The Contractor will use reasonable care to minimize the generation of waste, and will properly dispose of all waste it does generate.
11. The Contractor will use reasonable care to minimize the risk that its work poses to the environment, the customers, the general public and the contract employees.
12. The Contractor shall immediately notify the Authorized User Representative in writing of any indication of underground oil seepage which may be attributed to a leaky underground hydraulic cylinder.

### **2.17 Inspection of Work**

The quality of service will be subject to inspection by the Authorized User or Authorized User's designee at any time. For all such inspections, the Contractor shall provide an elevator mechanic who shall be on site during the testing, and the cost shall be included in the Monthly Maintenance Fee. Should it be found that the quality of services being performed is not satisfactory to the Authorized User, and that the requirements of the specifications are not being met, the Authorized User may terminate the Mini-bid Agreement and employ another Contractor to fulfill the requirements of the contract.

### **2.18 Staffing**

All work under the Contract shall be performed by skilled, competent, journeyman elevator mechanics directly employed or supervised by the Contractor or an approved subcontractor. Elevator mechanic helpers may be used, provided they are under the direct supervision of a journeyman elevator mechanic on site at all times. Direct supervision means working under constant guidance or simultaneously with a journeyman elevator mechanic. All journeyman elevator mechanics shall have a minimum of three (3) years of experience maintaining Lift Equipment. Sufficient personnel shall be assigned to meet the requirements of the Mini-bid Project Definition.

If required in the Mini-bid Project Definition, the Contractor shall provide proposed staffing information with their Mini-bid response (including but not limited to the names of Elevator Mechanics, their years of experience, etc) that may be evaluated by the Authorized User as part of their award methodology.

### **On-Site Mechanic**

When the scope of the Mini-bid Project Definition justifies a continuous presence at the work site to perform preventive maintenance and minor corrective maintenance, the Authorized User may require that an on-site mechanic be stationed at the facility for a specified amount of time each work day. All requirements for an on-site mechanic, including the minimum amount of time that the mechanic must be present, shall be specified in the Mini-bid Project Definition. All costs for the On-site Mechanic shall be included in the Monthly Maintenance Fee bid, and no additional reimbursement will be made for the On-site Mechanic.

### **Scheduled Building Shutdowns**

An elevator technician or mechanic shall be required to be on site during all building shutdowns. Scheduled shutdowns typically occur during non-business hours (i.e.: 5:00 pm to 7:00 am business days, 24 hours on weekends and holidays), last for a duration of approximately eight hours and there are typically two scheduled building shutdowns each year. The cost of labor for shutdowns will be included in the price bid for the Monthly Maintenance Fee.

### **Access for Repairs to Equipment Located Near Lift Equipment**

Should equipment (including but not limited to security systems or fire alarms) located in or near Lift Equipment require assistance with access, the Contractor shall provide an elevator mechanic who will be on site to assist with access, and the cost of this assistance shall be paid for based on the actual hours worked, (not including travel time) and the Labor Markup Rate.

## **2.19 Documentation and Record Keeping**

The Contractor shall maintain the following documentation and records on-site, for the use of the QEI and Authorized User:

- Wiring diagrams
- Code identified written and unique procedures
- Code identified checkout procedures
- Emergency elevator evacuation procedure
- Corrective maintenance records
- Parts and equipment replacement records
- Oil usage records
- Periodic Tests records
- Replacement criteria compliance records in accordance with ASME A17.6
- Call Back records

The Contractor shall also maintain the following documentation and records on-site in the elevator machine room:

- Equipment cleaning procedures shall be posted in a transparent enclosure for protection.
- MCP records

In addition, upon request the Contractor shall provide the Authorized User with the manufacturer's preventive maintenance recommendations and the preventive maintenance requirements from the latest adopted editions of ASME A17 and ASME A18.1 for the equipment covered under this Contract.

## **2.20 Work Scheduling**

All work performed under the resulting Mini-bid Agreement shall be coordinated with the Authorized User Representative in advance (prior to arrival at the facility) to ensure that the Lift Equipment is available and that access to the site can be provided.

In addition, when arriving at the Facility, all Contract personnel shall report to the Authorized User Representative in such a manner as pre-determined by the Authorized User Representative, and when exiting the facility, the Contractor's personnel shall again report to the Authorized User's Representative. Such attendance and reporting shall be documented in a manner defined by the Authorized User.

Should it be required to remove Lift Equipment from service, the elevator mechanic shall coordinate the removal with the Authorized User Representative. The number(s) of Lift Equipment units removed from service at one time shall be pre-approved by the Authorized User Representative, and typically not more than one (1) Lift Equipment unit shall be removed from service at a time.

The time of day that each Lift Equipment unit can be shut down for routine maintenance shall be scheduled with the Authorized User Representative to minimize the disruption caused by the Lift Equipment being out of service. In instances where the performance of the service requires the Lift Equipment to be out of service for a period exceeding sixty (60) minutes, the Contractor shall notify the Authorized User Representative. The Contractor shall provide to the Authorized User Representative the reason for keeping the Lift Equipment out of service for longer than sixty (60) minutes, and the estimated timeframe to return the Lift Equipment back to service. If Lift Equipment designated as essential is out of service for a period exceeding sixty (60) minutes, the Authorized User Representative may designate alternate Lift Equipment as essential through notification of the Contractor, and this designation shall remain in effect until all Lift Equipment is placed back in service.

### **2.21 Overtime**

The use of Overtime by the Contractor, except as otherwise provided in Section 2.8, must be pre-approved by the Authorized User Representative in order for the Contractor to be eligible for reimbursement for Overtime in accordance with this section. When pre-approval to use Overtime is granted and the service being performed is covered under either the *'Monthly Maintenance Fee'* or *'Fire Service Testing Fee'*, the Contractor shall pay its employees, at a minimum, the Overtime-hourly rate required by the NY State prevailing wage rate schedules and the Authorized User will separately reimburse Contractor for the difference between the regular Prevailing Wage rate and the overtime-hourly rate. When pre-approval to use Overtime is granted and the service being performed is covered under Major Corrective Maintenance, reimbursement will be made at the overtime-hourly rate required by the NY State prevailing wage rate schedules.

Except as otherwise provided in Section 2.8, should the Contractor work Overtime without pre-approval, no reimbursement will be made to the Contractor for the payment of Overtime prevailing wages.

### **2.22 Subcontracting of Work**

OGS considers the Contractor to be the sole contractor with regard to all provisions of this Contract. No subcontract entered into by the Contractor shall relieve the Contractor of any liabilities or obligations in this Contract. The Contractor accepts full responsibility for the actions of all employees or subcontractor/subcontractor's employee(s) who carry out any of the provisions of this Contract.

At the discretion of the Authorized User, a limit may be placed on the total value of all subcontracting work during the term of each Mini-bid Agreement, exclusive of New York State certified MWBE firms. If such a limit is imposed, it shall be specified in the Mini-bid Project Definition and expressed as a not to exceed percentage of the total Mini-bid value.

If subcontractors are to be used for the performance of services covered by the Monthly Maintenance Fee, it is understood that the Centralized Contract Price and Mini-bid Price include the cost of the subcontractor and no additional compensation will be allowed. If subcontractors are to be used for the performance of Major Corrective Maintenance, all pricing and associated terms and conditions established under the Centralized Contract shall apply.

During the term of this Contract and before any part of the any Mini-bid Agreement is subcontracted, the Contractor shall submit to the Authorized User, in writing, the name of each proposed subcontractor and obtain written consent for the use of each subcontractor. This information shall be submitted in ample time to permit acceptance or rejection of each proposed subcontractor by the Authorized User without causing delay in the work of the Task Oder, and the Contractor shall promptly furnish such information as the Authorized User or his/her designee may require concerning the proposed subcontractor's ability and qualifications.

### **2.23 Materials and Equipment**

The Contractor shall evaluate each specific installation to determine the spare parts inventory needed to be maintained on site in order to prevent downtime caused by the need to procure spare parts. The Contractor shall have and maintain on hand within the region, or adjacent County, a supply of spare parts sufficient for the preventative and corrective maintenance and expedient emergency repair of the Lift Equipment and shall also provide an adequate supply of tools to make repairs without any undue delay. At the Facility, the Authorized User shall provide sufficient metal storage cabinet space for spare parts and metal containers for the storage of waste and other flammable materials. The Contractor shall provide a lock to keep the contents of the metal storage cabinet secure and a key for the lock shall be provided to the Authorized User Representative.

The Contractor shall provide all replacement parts and equipment of every description. A replacement part is an individual piece of the equipment; equipment is made up of several parts. All replacement parts shall be new as specified by the original manufacturer or new after-market parts that are accepted by the Elevator industry as equal or better. In any instance where replacement parts specified by the original equipment manufacturer or after-market parts of equal or better quality are no longer available, an “equal” item may be acceptable, provided advance written approval of the item is obtained from the Authorized User.

All new parts shall have at least a one year warranty. All new equipment shall have either a one year warranty or the manufacturer’s warranty, whichever expires later. In the event a part or equipment needs replacement during the warranty period, the Contractor shall replace the part or equipment at no cost to the Authorized User.

All worn out, damaged and defective parts being replaced by the Contractor shall be presented to the Authorized User Representative for inspection prior to replacement. Authorized User retains right to keep all worn out, damaged and defective parts being replaced.

#### **2.24 Equipment, Wiring, and Circuit Changes**

The Contractor shall not make changes or alterations to the existing mechanical equipment, circuits, circuit wiring, or sequencing, and may not alter the original circuit or wiring design of the Lift Equipment unless authorized in writing by the Authorized User’s Representative. The Contractor shall submit any such proposed change to the Authorized User’s Representative for approval, and shall include complete legible drawings and wiring diagrams, as well as a complete description of and justification for the proposed change. Prior to submitting the proposed change, the Contractor shall, at its own cost and expense, obtain comments from the original equipment manufacturer concerning the overall effect of such changes on the system. If changes are made, the Contractor shall provide the Authorized User Representative with three exact copies of as-built drawings of the modifications including a complete description of the changes. The cost for all drawings and wiring diagrams shall be included in the Monthly Maintenance Fee.

#### **2.25 Schematic Wiring Diagrams**

The Contractor shall maintain a complete set of current, legible schematic wiring diagrams in each machine room for the Lift Equipment contained therein. Should Schematic Wiring Diagrams be unavailable or are unable to be retrieved from the previous Contractor, the Authorized User may specify in their Mini-Bid Project Definition the need for replacement diagrams, and the Contractor shall provide them as a pre-maintenance repair item. All schematic diagrams shall become the property of the Authorized User, and the cost for schematic wiring diagrams, with the exception of those agreed to be provided as a pre-maintenance repair item, shall be included in the Monthly Maintenance Fee.

#### **2.26 Contractor Close-Out Inspection and Repair**

The Authorized User may at its sole discretion elect, at least sixty (60) days prior to the expiration of the Mini-bid Agreement to, have the Contractor and the Authorized User’s Representative, or designee, undertake a complete examination of the Elevators covered under the Mini-bid Agreement. The Contractor shall coordinate and schedule the examination with the Authorized User’s Representative. It is the responsibility of the Authorized User’s Representative to determine if such an examination is warranted, and the Authorized User’s Representative is advised to contact an independent Qualified Elevator Inspector to assist with the examination.

The Authorized User’s Representative or designee, with the assistance of the Qualified Elevator Inspector, shall prepare an Existing Deficiency Report listing all deficiencies noted during the examination and the Contractor shall correct all deficiencies, with compensation made in accordance with either the provisions for Minor or Major Corrective Maintenance depending on the total cost of the repair, prior to the expiration of the Mini-bid Agreement.

#### **2.27 Examination of Buildings, Lift Equipment to be Serviced and Contract Documents**

Each Contractor is under an affirmative duty to inform itself by personal examination of the specifications and location of the proposed work during the mandatory site visit and by such other means as it may select, of the character, quality, and extent of the work to be performed and the conditions under which the Mini-bid Agreement is to be executed.

The Authorized User’s interpretation of specifications shall be final and binding upon the Contractor.

## **2.28 Pre-Maintenance Repairs**

In response to a Mini-bid Project Definition, the Contractor shall submit a maximum, not to exceed proposal to make repairs to any deficiencies identified in the Mini-bid Project Definition which qualify as Major Corrective Maintenance. These Pre-Maintenance repairs will be completed and paid for in accordance with Sections 2.4 ‘*Corrective Maintenance*’ and 2.7.3 ‘*Labor and Material Markup Rates*’ using the provisions for Major Corrective Maintenance. All Pre-Maintenance repairs shall be completed in accordance with Section 2.12 ‘*Deliverables*’ unless otherwise stated in the Mini-bid Project Definition. Any deficiencies that qualify as Minor Corrective Maintenance shall be completed and included in the Monthly Maintenance Fee bid.

For all Pre-Maintenance Repairs, the Authorized User reserves the right to solicit offers from, and have the work completed by, other Contractors.

## **2.29 Reporting Requirements**

The Contractor shall provide the following reports to either the Authorized User or OGS as detailed in the following sections. Failure to submit reports on a timely basis may result in Contract suspension and/or termination and designation of Contractor as non-responsible. The Contractor agrees that OGS reserves the right to amend the data elements collected in these reports. Such amendments shall not be substantive in nature and shall reflect information relevant to monitoring the expenditures under the Contract.

### **Monthly Reports**

The Contractor shall submit to the Authorized User a monthly electronic report, within 5 (five) business days of the following month, for each Elevator serviced. The format of the monthly report and the specific information provided shall be pre-approved by the Authorized User and shall contain the following minimum information:

- The site location and Elevator identification number
- The date and time (in work hours) required to perform the work including arrival and departure times
- The type of work performed on the Elevator (preventative maintenance, corrective maintenance, repair, callback service, other)
- A description of the work performed on the Elevator
- A summary of the cost of the work
- In the case of callback service a description of the callback and corrective action taken
- A list of all materials used
- A list of all work scheduled to be performed, but that was not completed during the specified time frame.

### **Annual Reports**

The Contractor shall submit to OGS Procurement Services an annual electronic report, within 30 days after the end of each calendar year. The format of the report and the specific information provided shall be pre-approved by OGS Procurement Services and shall contain the following information:

- A list of all active Mini-bid Agreements awarded under the Centralized Contract and Contracts with Authorized Users.
- A summary of the monthly invoices for each Mini-bid Agreement grouped by Lot number (Type of Elevator) and including the following information:
  - Invoice amounts for Monthly Maintenance Fees
  - Invoice amounts for Fire Service Testing Fees
  - Invoice amounts for Standby Mechanic labor
  - Invoice amounts for all major corrective maintenance labor
  - Invoice amounts for all major corrective maintenance materials
  - Invoice amounts for any other charges to the Authorized User

These annual reports shall be submitted to the current Contract Manager listed on the contract landing page on OGS Procurement Services’ website or as listed in the Contract Award Notification document.

### **MWBE and EEO Compliance Reports**

The Contractor shall submit MWBE and EEO Compliance Reports to OGS in accordance with Section 3.16 ‘Contractor Requirements and Procedures for Business Participation Opportunities for New York State Certified Minority- And Women-Owned Business Enterprises and Equal Employment Opportunities for Minority Group Members and Women’.



## SECTION 3 TERMS AND CONDITIONS

### 3.1 Term of Contract

#### **Term of Centralized Contract**

This Centralized Contract shall commence effective upon mailing or electronic communication of approval by the OGS Procurement Services and will have a lesser initial Contract term than the original Solicitation so that the Contracts from all periodic recruitments and all phases of awards end on April 19, 2021, unless extended, regardless of start date, and the awarded bid pricing will be in effect for one (1) year from the start date of the earliest contract award. Please note that if award dates are staggered due to the large number of lots and regions, all contracts will still end on the same date. The end date of the term will be posted in the Contract Award Notification on the OGS website. Also, please refer to Section 3.17 *Price Adjustment* for price changes which will be allowed after the first year of the contract.

If mutually agreed between the OGS Procurement Services and the Contractor, the Centralized Contract may be renewed under the same terms and conditions for one year.

#### **Term of Mini-bid Agreement**

Mini-bid Agreements awarded during the term of the Centralized Contract may have a total term of up to five years, including any extensions. Further, the end date of the Mini-bid Agreement may be up to three (3) years past the end date of the Centralized Contract provided that the total term of the Mini-bid Agreement does not exceed five years, including any extensions. This term duration allows an Authorized User the ability to maximize the service offered by the Centralized Contract.

### 3.2 Short Term Extension

In the event a replacement contract has not been issued, any contract let and awarded hereunder by the State, may be extended unilaterally by the State for an additional period of up to three (3) months upon notice to the Contractor with the same terms and conditions as the original contract including, but not limited to, quantities (prorated for such extension), prices, and delivery requirements. Any extension terminates upon Award of a replacement contract.

### 3.3 Appendix A

Appendix A, Standard Clauses For New York State Contracts, dated January 2014, attached hereto, is hereby expressly made a part of this Contract as fully as if set forth at length herein

### 3.4 Appendix B

Appendix B, Office of General Services General Specifications, dated May 2015, attached hereto, is hereby expressly made a part of this Contract as fully as if set forth at length herein and shall govern any situations not covered by this Contract or Appendix A.

### 3.4.1 Appendix B Amendments

Appendix B is hereby amended as follows:

- a. Section 5 (Late Bids Rejected) is hereby deleted and replaced with the following:

**LATE BIDS:**

Bids must be received at the location designated in the Solicitation at or before the date and time established in the Solicitation for the Bid opening or receipt of Bids.

Any Bid received at the designated location after the established time will be considered a Late Bid. A Late Bid may be rejected and disqualified from award. Notwithstanding the foregoing, a Late Bid may be accepted in the Commissioner's sole discretion where (i) no timely Bids meeting the requirements of the Solicitation are received, (ii) in the case of a multiple award, an insufficient number of timely Bids are received to satisfy the multiple award, or (iii) the Bidder has demonstrated to the satisfaction of the Commissioner that the Late Bid was caused solely by factors outside the control of the Bidder. However, in no event will the Commissioner be under any obligation to accept a Late Bid.

The basis for any determination to accept a Late Bid shall be documented in the procurement record.

- b. Section 6 (Extraneous Terms) is amended by adding the following sentence at the end of the first unnumbered paragraph:

All requests for extraneous terms or bid deviations shall be submitted during the inquiries period. Any extraneous terms submitted with the Bid shall not be considered part of the Bid or resulting Centralized Contract, and shall be disregarded.

- c. Paragraph b of Section 46 (Termination) is hereby deleted and replaced with the following:

**For Convenience** This Contract may be terminated at any time by the Commissioner for convenience upon sixty (60) calendar days or other longer period as specified by written notice, without penalty or other early termination charges due. Such termination of the Contract shall not affect any project or Purchase Order that has been issued under the Contract prior to the date of such termination. If the Contract is terminated pursuant to this subdivision, the Authorized User shall remain liable for all accrued but unpaid charges incurred through the date of the termination. Contractor shall use due diligence and fulfill any outstanding Purchase Orders.

By written notice, an Authorized User may terminate a Mini-bid Agreement at any time for convenience upon sixty (60) calendar days written notice or other specified time period of at least sixty calendar days without penalty or other early termination charges due. Such termination of the Mini-bid Agreement shall not affect the Contract or any other project or Purchase Order that has been issued under the Contract. If an Authorized User Mini-bid Agreement is terminated pursuant to this subdivision, the Authorized User shall remain liable for all completed and accepted services and deliverables but unpaid through the date of the termination. Contractor shall use due diligence and provide any outstanding services and deliverables for which payment is made.

- d. Section 60 (Indemnification) is hereby deleted and replaced with the following:

Contractor shall be fully liable for the actions of its agents, employees, partners or Subcontractors and shall fully defend, indemnify and hold harmless the Authorized Users from suits, actions, damages and costs of every name and description relating to personal injury and damage to real or personal tangible property caused by any intentional act or negligence of Contractor, its agents, employees, partners or Subcontractors, which shall arise from or result directly or indirectly from this Contract, without limitation; provided, however, that the Contractor shall not indemnify to the extent any claim, loss or damage arising hereunder is due to the negligent act, failure to act, gross negligence or willful misconduct of the Authorized Users.

The Authorized User shall give Contractor: (i) prompt written notice of any action, claim or threat of suit, or other suit for which Contractor is required to fully indemnify an Authorized User, (ii) the opportunity to take over, settle or defend such action, claim or suit at Contractor's sole expense, and (iii) assistance in the defense of any such action, claim or suit at the expense of Contractor. Notwithstanding the foregoing, the State reserves the right to join such action, at its sole expense, if it determines there is an issue involving a significant public interest.

In the event that an action or proceeding at law or in equity is commenced against the Authorized User arising out of a claim for death, personal injury or damage to real or personal tangible property caused by any intentional or willful act, gross negligence, or negligence of Contractor, its agents, employees, partners or Subcontractors, which shall arise from or result directly or indirectly from the Products supplied under this Contract, and Contractor is of the opinion that the allegations in such action in whole or in part are not covered by the indemnification and defense provisions set forth in the Contract, Contractor shall immediately notify the Authorized User and the New York State Office of the Attorney General in writing and shall specify to what extent Contractor believes it is obligated to defend and indemnify under the terms and conditions of the Contract and to what extent it is not so obligated to defend and indemnify. Contractor shall in such event attempt to secure a continuance to permit the State and the Authorized User to appear and defend their interests in cooperation with Contractor, as is appropriate, including any jurisdictional defenses the State and Authorized User may have. In the event of a dispute regarding the defense, the Contractor and the Attorney General shall try to reach an amicable resolution, but the Attorney General shall have the final determination on such matters.

### 3.5 Appendix C

Appendix C, *Contract Modification Procedure*, attached hereto, is hereby expressly made a part of this Contract as fully as if set forth at length herein.

### 3.6 Appendix D

Appendix D, *Mini-bid Project Definition Template*, is hereby expressly made a part of this Contract as fully as if set forth at length herein.

### 3.7 Appendix E

Appendix E, *How to Use Instructions*, is hereby expressly made a part of this Contract as fully as if set forth at length herein.

### 3.8 Conflict of Terms and Conditions:

CONTRACT: Conflict of Terms and Conditions. Conflicts among the documents shall be resolved in the following order of precedence:

1. Appendix A, Standard Clauses for New York State Contracts;
2. The base Contract (the portion of the document preceding the signature of the parties), including all appendices and attachments;
3. Appendix B, OGS General Specifications; and
4. Any Mini-bid Agreement.

### 3.9 Insurance Requirements

The Contractor shall procure at its sole cost and expense and shall maintain in force at all times during the term of the Centralized Contract all policies of insurance pursuant to the requirements outlined in Attachment 2, *Insurance Requirements*.

Upon expiration of the Centralized Contract, the terms and conditions of this Section shall continue to apply to any replacement contracts entered into by the Contractor and Authorized User, any renewal of this Centralized Contract or any purchase orders issued by an Authorized User, unless those terms and conditions are amended pursuant to the written agreement of the Contractor and Authorized User. In the event that the terms and conditions are imposed through a purchase order, compliance shall be verified by the Authorized User.

### 3.10 Mercury-Added Consumer Products:

Contractor agrees that it will not sell or distribute fever thermometers containing mercury or any products containing elemental mercury for any purpose under this Contract.

### 3.11 Non-State Agencies Participation in Centralized Contracts

New York State political subdivisions and others authorized by New York State law may participate in contracts. These include, but are not limited to local governments, public authorities, public school and fire districts, public and nonprofit libraries, and certain other nonpublic/nonprofit organizations. See "Participation in Centralized Contracts" in Appendix B, OGS General Specifications. For purchase orders issued by the Port Authority of New York and New Jersey (or any other authorized entity that may have delivery locations adjacent to New York State), the terms of Section 2.7 *Centralized Contract Pricing* shall be modified to include delivery to locations adjacent to New York State.

Upon request, all eligible non-State agencies must furnish Contractors with the proper tax exemption certificates and documentation certifying eligibility to use State contracts. Questions regarding an organization's eligibility to purchase from New York State Contracts may also be directed to OGS Procurement Services Customer Services at 518-474-6717.

### 3.12 Performance/Bid Bonds

There are no BONDS for this Contract. In accordance with Appendix B, §44 Performance/Bid Bond, the Commissioner of OGS has determined that no performance, payment or Bid bond, or negotiable irrevocable letter of credit or other form of security for the faithful performance of the Contract shall be required at any time during the term of the Contract.

### 3.13 New York State Vendor Responsibility Questionnaire For-Profit Business Entity

The Contractor shall at all times during the Contract term remain responsible. The Contractor agrees, if requested by the Commissioner of OGS or her designee, to present evidence of its continuing legal authority to do business in New York State, integrity, experience, ability, prior performance, and organizational and financial capacity.

The Commissioner of OGS or her designee, in his or her sole discretion, reserves the right to suspend any or all activities under this Contract, at any time, when he or she discovers information that calls into question the responsibility of the Contractor. In the event of such suspension, the Contractor will be given written notice outlining the particulars of such suspension. Upon issuance of such notice, the Contractor must comply with the terms of the suspension order. Contract activity may resume at such time as the Commissioner of OGS or her designee issues a written notice authorizing a resumption of performance under the Contract.

The Contractor agrees that if it is found by the State that the Contractor's responses to the Questionnaire were intentionally false or intentionally incomplete, on such finding, the Commissioner may terminate the Contract.

Upon written notice to the Contractor, and a reasonable opportunity to be heard with appropriate OGS officials or staff, the Contract may be terminated by the Commissioner of OGS or her designee at the Contractor's expense where the Contractor is determined by the Commissioner of OGS or her designee to be non-responsible. In such event, the Commissioner of OGS or her designee may complete the contractual requirements in any manner he or she may deem advisable and pursue available legal or equitable remedies for breach.

In no case shall such termination of the Contract by the State be deemed a breach thereof, nor shall the State be liable for any damages for lost profits or otherwise, which may be sustained by the Contractor as a result of such termination.

### 3.14 Periodic Recruitment

The State reserves the right to accept additional proposals at any time determined by the State to be in its best interest. These additional proposals shall be evaluated under the same terms and conditions as the original bids and the following:

- For the evaluation of the Administrative Proposal, the same process set forth in the original Solicitation shall be followed;
- For the evaluation of the Technical Proposal, the same process set forth in the original Solicitation shall be followed; and
- For the evaluation of the Cost Proposal, bids received under any subsequent Periodic Recruitments will be evaluated as follows:

Step 1: For each region and lot, the Bidder's proposed fees and markup percentages will be combined via the formula below to establish an estimated total monthly price.

Estimated Total Monthly Price = (MMF) + (FSTF) + (MCM)

Where:

MMF = Monthly Maintenance Fee

FSTF = Fire Service Testing Fee. If not included in lot, then FSTF is equated to zero.

MCM = Estimated Monthly Cost of Major Corrective Maintenance

= (Labor Costs) + (Material Costs)

= (H)/12 x [(1 + LMR/100) x ((PWR, Team) + (SB, Team))] + (M)/12 x (1 + MMR/100)

= (30 hours)/12 x [(1 + LMR/100) x ((PWR, Team) + (SB, Team))] + (\$3300)/12 x (1 + MMR/100)

Where:

H = The assumed number of hours of Major Corrective Maintenance for one elevator in one year = 30 hours

PWR, Team = The prevailing wage rate for a team of two mechanics (one journeyman and one helper)

LMR = Labor Markup Rate (%)

SB = Supplemental Benefit for a team of two mechanics (one journeyman and one helper)

M = The assumed material costs for Major Corrective Maintenance for one elevator in one year = \$3300

MMR = Materials Markup Rate (%)

Step 2: For each region and lot, the 'Bidder's Estimated Total Monthly Price' for each bid received under periodic recruitment will be averaged with the current Contractors' Estimated Total Monthly Price to create an "Average Estimated Monthly Price". For the purposes of this analysis the currently awarded Contractors' Estimated Total Monthly Price will be calculated using the above formula and the currently awarded MMF, FSTF, LMR and MMR rates for the applicable Lot and Region.

Step 3: Each Bidder's Total Estimated Monthly Price will be compared to the Average Estimated Monthly Price for the lot/region. If a Bidder's Estimated Total Monthly Price is greater than 150% of the Average Estimated Monthly Price, the bid will be considered a "Fail" and will not be evaluated further.

If the proposal is accepted, a Centralized Contracts shall be awarded and the Contractor shall be placed on the list of prequalified Contractors for the remaining term of the initial agreement.

These periodic recruitments are open to either new Contractors or Contractors who already hold a Centralized Contract and wish to bid on regions or services not awarded. No bids will be accepted from current Contractors who submit a bid for a currently awarded Lot and Region. An unsuccessful Bidder may submit a new bid under the Periodic Recruitment of Contractors, however the new proposal may not contain prices exceeding those previously proposed for the same regions or items unless the Bidder provides documented evidence that the prior amount(s) bid were erroneous or market fluctuations have necessitated increases as would be allowed in the Price Adjustment Clause section 3.17. Once the proposal is evaluated, contracts shall be awarded to all Contractors who are deemed qualified. After award, only those Contractors who hold a Contract from the original Solicitation for a particular region and lot shall be allowed to bid specific Mini-bid Project Definitions for that region and lot.

### 3.15 New York State Tax Law §5-a

Tax Law §5-a requires certain Contractors awarded state Contracts for commodities, services and technology valued at more than \$100,000 to certify to NYS Department of Taxation and Finance (DTF) that they are registered to collect New York State and local sales and compensating use taxes. The law applies to Contracts where the total amount of such Contractors' sales delivered into New York State is in excess of \$300,000 for the four quarterly periods immediately preceding the quarterly period in which the certification is made, and with respect to any affiliates and subcontractors whose sales delivered into New York State exceeded \$300,000 for the four quarterly periods immediately preceding the quarterly period in which the certification is made.

A Contractor is required to file the completed and notarized Form ST-220-CA with OGS certifying that the Contractor filed the ST-220-TD with DTF. Note: NYS DTF receives the completed Form ST-220-TD, not OGS. OGS ONLY receives the Form ST-220-CA. Form ST-220-CA must be filed with the bid and submitted to the procuring covered Agency certifying that the Contractor filed the ST-220-TD with DTF. Contractor should complete and return the certification forms within five (5) business days of request (if the forms are not completed and returned with bid submission). Failure to make either of these filings may render a Contractor non-responsive and non-responsible. Contractor shall take the necessary steps to provide properly certified forms within a timely manner to ensure compliance with the law.

Website links to the Contractor certification forms and instructions are provided below. Form ST-220-TD must be filed with and returned directly to DTF and can be found at [http://www.tax.ny.gov/pdf/current\\_forms/st220td\\_fill\\_in.pdf](http://www.tax.ny.gov/pdf/current_forms/st220td_fill_in.pdf) Unless the Contract PS924AA, Otis Elevator Company

information upon which the ST-220-TD is based changes, this form only needs to be filed once with DTF. If the information changes for the Contractor, its affiliate(s), or its subcontractor(s), a new Form ST-220-TD must be filed with DTF.

Form ST-220-CA must be submitted to OGS. This form provides the required certification that the Contractor filed the ST-220-TD with DTF. This form can be found at [http://www.tax.ny.gov/pdf/current\\_forms/st/st220ca\\_fill\\_in.pdf](http://www.tax.ny.gov/pdf/current_forms/st/st220ca_fill_in.pdf)

Vendors may call DTF at 518-485-2889 for any and all questions relating to Section 5-a of the Tax Law and relating to a company's registration status with DTF. For additional information and frequently asked questions, please refer to the DTF web site: <http://www.tax.ny.gov/>.

### **3.16 Contractor Requirements and Procedures for Equal Employment and Business Participation Opportunities for Minority Group Members and New York State Certified Minority and Women-Owned Business Enterprises and Equal Employment Opportunities for Minority Group Members and Women**

#### **I. Policy Statement**

The New York State Office of General Services (“OGS”), as part of its responsibility, recognizes the need to promote the employment of minority group members and women and to ensure that certified minority- and women-owned business enterprises have opportunities for maximum feasible participation in the performance of OGS contracts.

In 2006, the State of New York commissioned a disparity study to evaluate whether minority- and women-owned business enterprises had a full and fair opportunity to participate in State contracting. The findings of the study were published on April 29, 2010, under the title “The State of Minority- and Women-Owned Business Enterprises: Evidence from New York” (the “Disparity Study”). The Disparity Study found evidence of statistically significant disparities between the level of participation of minority- and women-owned business enterprises in State procurement contracting versus the number of minority- and women-owned business enterprises that were ready, willing and able to participate in State procurements. As a result of these findings, the Disparity Study made recommendations concerning the implementation and operation of the Statewide certified minority- and women-owned business enterprises program. The recommendations from the Disparity Study culminated in the enactment and the implementation of New York State Executive Law Article 15-A, which requires, among other things, that OGS establish goals for maximum feasible participation of New York State certified minority- and women-owned business enterprises (“MWBE”) and the employment of minority groups members and women in the performance of New York State contracts.

#### **II. General Provisions**

- A. OGS is required to implement the provisions of New York State Executive Law Article 15-A and 5 NYCRR Parts 140-145 (“MWBE Regulations”) for all State contracts as defined therein, with a value (1) in excess of \$25,000 for labor, services, equipment, materials, or any combination of the foregoing or (2) in excess of \$100,000 for real property renovations and construction.
- B. The Contractor agrees, in addition to any other nondiscrimination provision of the Contract and at no additional cost to OGS, to fully comply and cooperate with OGS in the implementation of New York State Executive Law Article 15-A. These requirements include equal employment opportunities for minority group members and women (“EEO”) and contracting opportunities for New York State Certified minority- and women-owned business enterprises (“MWBEs”). Contractor’s demonstration of “good faith efforts” pursuant to 5 NYCRR §142.8 shall be a part of these requirements. These provisions shall be deemed supplementary to, and not in lieu of, the nondiscrimination provisions required by New York State Executive Law Article 15 (the “Human Rights Law”) or other applicable federal, State or local laws.
- C. The Contractor further agrees to be bound by the provisions of Article 15-A and the MWBE Regulations. If any of these terms or provisions conflict with applicable law or regulations, such laws and regulations shall supersede these requirements.
- D. Failure to comply with all of the requirements herein may result in a finding of non-responsiveness, non-responsibility, breach of contract, withholding of funds, liquidated damages pursuant to clause IX of this section and/or enforcement proceedings as allowed by the Contract.

#### **III. Equal Employment Opportunity (EEO)**

- A. Contractor shall comply with the provisions of Article 15-A set forth below. These provisions apply to all Contractors, and any subcontractors, awarded a subcontract over \$25,000, for labor, services, including legal, financial and other professional services, travel, supplies, equipment, materials, or any combination of the foregoing, to be

performed for, or rendered or furnished to the contracting State agency (the “Work”) except where the Work is for the beneficial use of the Contractor.

1. Contractor and subcontractors shall undertake or continue existing EEO programs to ensure that minority group members and women are afforded equal employment opportunities without discrimination because of race, creed, color, national origin, sex, age, disability or marital status. For these purposes, EEO shall apply in the areas of recruitment, employment, job assignment, promotion, upgrading, demotion, transfer, layoff, or termination and rates of pay or other forms of compensation. This requirement does not apply to: (i) the performance of work or the provision of services or any other activity that is unrelated, separate or distinct from the Contract; or (ii) employment outside New York State.
2. By entering into this Contract, Contractor certifies that the text set forth in clause 12 of Appendix A, attached hereto and made a part hereof, is Contractor’s equal employment opportunity policy.

**B. Form EEO 100 - Staffing Plan.**

To ensure compliance with this section, the Contractor agrees to submit or has submitted with the Bid a staffing plan on Form EEO 100 to OGS to document the composition of the proposed workforce to be utilized in the performance of the Contract by the specified categories listed, including ethnic background, gender, and federal occupational categories.

**C. Form EEO 101 - Workforce Utilization Reporting Form (Commodities and Services) (“Form EEO-101-Commodities and Services”)**

1. The Contractor shall submit, and shall require each of its subcontractors to submit, a Form EEO-101-Commodities and Services to OGS to report the actual workforce utilized in the performance of the Contract by the specified categories listed including ethnic background, gender, and Federal occupational categories. The Form EEO-101-Commodities and Services must be submitted electronically to OGS at [EEO\\_CentCon@ogs.ny.gov](mailto:EEO_CentCon@ogs.ny.gov) on a quarterly basis during the term of the Contract by the 10th day of April, July, October, and January.
2. Separate forms shall be completed by Contractor and any subcontractor.
3. In limited instances, the Contractor or subcontractor may not be able to separate out the workforce utilized in the performance of the Contract from its total workforce. When a separation can be made, the Contractor or subcontractor shall submit the Form EEO-101-Commodities and Services and indicate that the information provided relates to the actual workforce utilized on the Contract. When the workforce to be utilized on the Contract cannot be separated out from the Contractor's or subcontractor's total workforce, the Contractor or subcontractor shall submit the Form EEO-101-Commodities and Services and indicate that the information provided is the Contractor's or subcontractor’s total workforce during the subject time frame, not limited to work specifically performed under the Contract.

**D. Contractor shall comply with the provisions of the Human Rights Law, all other State and federal statutory and constitutional non-discrimination provisions. Contractor and subcontractors shall not discriminate against any employee or applicant for employment because of race, creed (religion), color, sex, national origin, sexual orientation, military status, age, disability, predisposing genetic characteristic, marital status or domestic violence victim status, and shall also follow the requirements of the Human Rights Law with regard to non-discrimination on the basis of prior criminal conviction and prior arrest.**

**IV. Contract Goals**

**A. OGS hereby establishes an overall goal of 10% for MWBE participation, 5% for Minority-Owned Business Enterprises (“MBE”) participation and 5% for Women-Owned Business Enterprises (“WBE”) participation (based on the current availability of qualified MBEs and WBEs to provide materials and supplies). The total Contract goal can be obtained by utilizing any combination of MBE and /or WBE participation for subcontracting and supplies acquired under the Contract.**

**B. For purposes of providing meaningful participation by MWBEs on the Contract and achieving the Contract goals established in clause IV-A hereof, Contractor should reference the directory of New York State Certified MWBEs found at the following internet address: <https://ny.newnycontracts.com/FrontEnd/VendorSearchPublic.asp?TN=ny&XID=2528>. The MWBE Regulations are located at 5 NYCRR § 140 – 145. Questions regarding compliance with MWBE participation goals should be directed to the Designated Contacts within the OGS Office of Minority- and Women Owned Businesses and Community Relations. Additionally, following Contract execution, Contractor is encouraged to contact the Division of Minority and Women’s Business Development ((518) 292-5250; (212) 803-2414; or (716) 846-8200) to discuss additional methods of maximizing participation by MWBEs on the Contract.**

- C. Contractor must document “good faith efforts” to provide meaningful participation by MWBEs as suppliers in the performance of the Contract (see clause VII below).

#### **V. MWBE Utilization Plan**

- A. Contractor certifies that it will follow the submitted MWBE Utilization Plan for the performance of MWBEs on the Contract pursuant to the prescribed MWBE goals set forth in clause IV-A of this Section.
- B. Contractor further agrees that a failure to submit and/or use such completed MWBE Utilization Plan shall constitute a material breach of the terms of the Contract. Upon the occurrence of such a material breach, OGS shall be entitled to any remedy provided herein, including but not limited to, a finding of Contractor non-responsiveness.

#### **VI. Request for Waiver**

- A. Prior to submission of a request for a partial or total waiver, Bidder/Contractor shall speak to the Designated Contacts of the OGS Office of Minority- and Women-Owned Businesses and Community Relations for guidance.
- B. In accordance with 5 NYCRR § 142.7, a Contractor who is able to document good faith efforts to meet the goal requirements, as set forth in clause VII below, may submit a request for a partial or total waiver on Form BDC 333, accompanied by supporting documentation. If the documentation included with the Bidder’s/Contractor’s waiver request is complete, OGS shall evaluate the request and issue a written notice of acceptance or denial within twenty (20) days of receipt.
- C. Contractor shall attempt to utilize, in good faith, any MBE or WBE identified within its MWBE Utilization Plan, during the performance of the Contract. Requests for a partial or total waiver of established goal requirements made subsequent to Contract award may be made at any time during the term of the Contract to OGS, but must be made no later than prior to the submission of a request for final payment on the Contract.
- D. If OGS, upon review of the MWBE Utilization Plan and Monthly MWBE Contractor Compliance Reports determines that Contractor is failing or refusing to comply with the contract goals and no waiver has been issued in regards to such non-compliance, OGS may issue a notice of deficiency to the Contractor. The Contractor must respond to the notice of deficiency within seven (7) business days of receipt. Such response may include a request for partial or total waiver of MWBE contract goals.

#### **VII. Required Good Faith Efforts**

In accordance with 5 NYCRR § 142.8, Contractors must document their good faith efforts toward utilizing MWBEs on the Contract. Evidence of required good faith efforts shall include, but not be limited to, the following:

1. A list of the general circulation, trade and MWBE-oriented publications and dates of publications in which the Contractor solicited the participation of certified MWBEs as subcontractors/suppliers and copies of such solicitations and any responses thereto.
2. A list of the certified MWBEs appearing in the Empire State Development MWBE directory that were solicited for this Contract. Provide proof of dates or copies of the solicitations and copies of the responses made by the certified MWBEs. Describe specific reasons that responding certified MWBEs were not selected.
3. Descriptions of the Contract documents/plans/specifications made available to certified MWBEs by the Contractor when soliciting their participation and steps taken to structure the scope of work for the purpose of subcontracting with or obtaining supplies from certified MWBEs.
4. A description of the negotiations between the Contractor and certified MWBEs for the purposes of complying with the MWBE goals of this Contract.
5. Dates of any pre-bid, pre-award or other meetings attended by Contractor, if any, scheduled by OGS with certified MWBEs whom OGS determined were capable of fulfilling the MWBE goals set in the Contract.
6. Other information deemed relevant to the request.



### VIII. Quarterly MWBE Contractor Compliance Report

- A. In accordance with 5 NYCRR § 142.10, Contractor is required to report Quarterly MWBE Contractor Compliance to OGS during the term of the Contract for the preceding quarter's activity, documenting progress made towards achievement of the Contract MWBE goals.
- B. On January 1, April 1, July 1, and October 1 of each year, Contractors shall submit to OGS a report containing the following information: A list of all contracts Contractor has with State Agencies and Authorities awarded pursuant to a mini-bid under the backdrop Contract resulting from this Solicitation and the actual dollar amounts received from each contract for that quarter. The report shall also contain a list of all certified MWBEs to which the Contractor has made payments and the dollar amounts paid to those MWBEs for that quarter. Contractors must use the MWBE Quarterly Reporting Form, **Attachment 10 to report this information.**
- C. MWBE Quarterly Reporting Form, Attachment 10 shall be sent to: OGS MWBE Office, 29<sup>th</sup> floor Corning Tower, Empire State Plaza, Albany, NY 12242. Phone: 518-486-9284; Fax: 518-486-9285.
- D. It is the Contractor's responsibility to report MWBE subcontractor and supplier payments. Failure to provide the MWBE Quarterly Reporting Form, Attachment 10 to OGS, may jeopardize future payments pursuant to the MWBE liquidated damages clause in clause IX below.

### IX. Breach of Contract and Liquidated Damages

- A. In accordance with Executive Law Section 316-a and 5 NYCRR § 142.13, the Contractor acknowledges that if it is found to have willfully and intentionally failed to comply with the MWBE participation goals set forth in the Contract, such a finding constitutes a breach of contract and the Contractor shall be liable to OGS for liquidated or other appropriate damages, as set forth herein.
- B. Such liquidated damages shall be calculated as an amount equaling the difference between:
  1. All sums identified for payment to MWBEs had the Contractor achieved the contractual MWBE goals; and
  2. All sums actually paid to MWBEs for work performed or materials supplied under the Contract.
- C. If, after Contractor has been afforded due process to respond to the allegation that it willfully or intentionally failed to comply with the MWBE participation goals, OGS determines that Contractor is liable for liquidated damages and such identified sums have not been withheld by OGS, Contractor shall pay such liquidated damages to OGS within sixty (60) days after such determination unless prior to the expiration of such sixtieth day, the Contractor has filed a complaint with the Director of the Division of Minority and Women's Business Development pursuant to Subdivision 8 of Section 313 of the Executive Law, in which event the liquidated damages shall be payable if the Director renders a decision in favor of OGS.

**ALL FORMS** (Except the MWBE Quarterly Reporting Form, Attachment 10) **ARE AVAILABLE**

**AT:** <http://www.ogs.ny.gov/MWBE/Forms.asp>

### 3.17 Price Adjustments

#### CPI Adjustments

On each annual anniversary date of OGS's approval of the first contract award for the original Solicitation, the Contractor may request a rate change for the Centralized Contract '*Monthly Maintenance Fee*' and '*Fire Service Testing Fee*' based upon fluctuations in the latest published copy of the Consumer Price Index for all urban consumers using the 'Services' commodity and service group as published by the U.S. Department of Labor, Bureau of Labor Statistics, Washington, D.C. 20212. If a Contractor is delinquent with their Administrative Reporting, OGS Procurement Services will not approve a request for a Price Adjustment.

- The index is also available through the Internet at the Bureau of Labor Statistics web site at <http://stats.bls.gov/>. Go to "Subjects" > "Inflation and Prices Overview" > "Consumer Price Index" > "CPI Tables" and then refer to "Table

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Containing History of CPI-U U.S. All Items Indexes and Annual Percent Changes From 1913 to Present is now available in the CPI Detailed Report as Table 24”.

Similarly, on each annual anniversary date of the Contract Award for a Mini-bid Agreement, the Contractor may request a rate change to the Mini-bid Agreement ‘*Monthly Maintenance Fee*’ and ‘*Fire Service Testing Fee*’ using the same methodology. Adjustments made to Centralized Contract will not impact pricing on an established Mini-bid Agreement. Such adjustments must be requested by the Contractor to the Authorized User and shall not exceed the prices authorized under the Centralized Contract.

In addition, the Contractor may reduce fees or markup rates at any time, by submitting a request to OGS Procurement Services and/or the Authorized User.

To request a price adjustment, the Contractor shall submit a written and signed request, on company letterhead, to the OGS employee assigned to the Contract within 90 days of the applicable anniversary date. Upon receipt of the request, OGS will calculate the CPI adjustment and make the appropriate changes to the contract pricing.

The Contractor is solely responsible for notifying OGS Procurement Services that the Contractor wishes to receive the CPI rate change. Should the Contractor fail to make a request to OGS Procurement Services or the Authorized User within ninety (90) days after the applicable anniversary date, the Contractor shall be deemed to have waived its right to any increase in price for that year, but the State or Authorized User shall not be barred from making the appropriate adjustment in the case of a decrease determined in accordance with the above methodology.

Price adjustments using the CPI involve changing the base payment by the percent change in the level of the CPI for the current year compared to the previous year. This is calculated by first determining the index point change between the two readings and then the percent change. The price adjustment shall be calculated as follows: Take the CPI value for the 3rd month prior to the current anniversary date and subtract the CPI value for the 3rd month prior to the previous anniversary date (15 months prior to the current anniversary date) [e.g.: If OGS approved the first contract award in December, take the September CPI value of the current year and subtract the September CPI value of the previous year]. That sum is then divided by the previous period CPI value and this result is then multiplied by 100 to equal the percent change which is the price adjustment value. This percentage change (increase or decrease) shall be applied to the next Contract year, upon release of a Contract Addendum from OGS Procurement Services.

The following example illustrates the computation of percent change for a hypothetical April 2004 anniversary calculation:

CPI FOR CURRENT PERIOD (JANUARY 2004)	185.2
LESS CPI FOR PREVIOUS PERIOD (JANUARY 2003)	181.7
EQUALS INDEX POINT CHANGE	3.5
DIVIDED BY PREVIOUS PERIOD CPI	181.7
EQUALS	0.0192
RESULT MULTIPLIED BY 100	<u>0.019 X 100</u>
EQUALS PERCENT CHANGE	1.9%

### 3.18 NYS Department of Labor Prevailing Wage Rates

Prevailing wage rate as part of the requirements of Article 8 and Article 9 of the New York State Labor Law, requires public work Contractors and subcontractors to pay laborers, workers or mechanics employed in the performance of a public work contract not less than the prevailing rate of wage and to provide supplements (fringe benefits) in accordance with prevailing practices in the locality where the work is performed.

Work being bid is subject to the prevailing wage rate provisions of New York State Labor Law Article 8. The applicable Prevailing Wage Rate Schedule for this project is **PRC # 2014008985 Elevator Constructor**

For access to the Department of Labor (DOL) Prevailing Wage Schedule, use the following link:

<http://wpp.labor.state.ny.us/wpp/publicViewProject.do?method=showIt&id=1092219>

For Prevailing Wage Updates, use the following DOL link:

<http://wpp.labor.state.ny.us/wpp/publicViewPWChanges.do?method=showIt>

Links to schedule updates appear in the table at the bottom of the web page.

Contract PS924AA, Otis Elevator Company

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**IMPORTANT NOTE: The above PRC number MUST be noted on all purchase orders issued for purchases from this contract.**

Prevailing Wage Rates - Public Works and Building Services Contracts" in Appendix B, OGS General Specifications. Any federal or State determination of a violation of any public works law or regulation, or labor law or regulation, or any OSHA violation deemed "serious or willful" may be grounds for a determination of vendor non-responsibility and rejection of bid.

Please note, contractors that provide service to New York City (NYC) government agencies shall pay their employees the greater of the two following wage rates: the prevailing wage rate for the title of "Elevator Service/Modernization Mechanic", as listed in the then most current prevailing wage schedule issued by the Office of the New York City Comptroller or the prevailing wage rate for the title of "Elevator Constructor - Modernization and Repair", as listed in the then most current prevailing wage schedule issued by the NYS Department of Labor.

### 3.19 Appendix C, Centralized Contract Modification Process

- A. OGS, an Authorized User, or the Contractor may suggest modifications to the Centralized Contract or its Appendices. Except as specifically provided herein, modifications to the terms and conditions set forth herein may only be made with mutual written agreement of the Parties. Modifications may take the form of an update or an amendment. "Updates" are changes that do not require a change to the established Centralized Contract terms and conditions. A request to add new products at the same or better price level is an example of an update. "Amendments" are any changes that are not specifically covered by the terms and conditions of the Centralized Contract, but inclusion is found to be in the best interest of the State. A request to change a contractual term and condition is an example of an amendment.
- B. Updates to the Centralized Contract and the Appendices may be made in accordance with the contractual terms and conditions to incorporate new products or services, make price level revisions, delete products or services, or to make such other updates to the established Centralized Contract terms and conditions, not resulting in a change to such terms and conditions, which are deemed to be in the best interest of the State.
- C. OGS reserves the right to consider modifications which are not specifically covered by the terms of the Centralized Contract, but are judged to be in the best interest of the State. Such modifications are deemed amendments to the Centralized Contract and may require negotiations between Contractor and OGS before execution.
- D. All modifications proposed by Contractor, shall be processed in accordance with Appendix C, Contract Modification Procedure. The Contractor shall submit all requests in the form and format contained in Appendix C, Contract Modification Procedure. The form contained within Appendix C is subject to change at the sole discretion of OGS.
- E. Modifications proposed by OGS or an Authorized User, including updates and amendments, shall be processed in accordance with the terms of the Centralized Contract and Appendix B, §27.

### 3.20 Overlapping Contract Items

Products/services available in the resulting contract may also be available from other New York State contracts. Authorized Users will be advised to select the most cost effective procurement alternative that meets their program requirements and to maintain a procurement record documenting the basis for this selection.

### 3.21 Notices

All notices, demands, designations, certificates, requests, offers, consents, approvals and other instruments given pursuant to this Contract shall be in writing and shall be validly given when mailed by registered or certified mail, or hand delivered, (i) if to the State, addressed to the State at its address, and (ii) if to Contractor, addressed to Contract Administrator at the Contractor address. The parties may from time to time, specify any address in the United States as its address for purpose of notices under this Contract by giving fifteen (15) days written notice to the other party. The Parties agree to mutually designate individuals as their respective representatives for purposes of this Contract. Contact information for the designated individuals will be set forth on the Contract Award Notification (CAN) and on the Contractor Information page for this Contract, which will be posted on the OGS website.

All notices sent shall be effective upon actual receipt by the receiving party. The Contractor will be required to forward a copy of the official notice to an Authorized User that is associated with the subject of the notice.

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Written notice of any alleged breach by one party to the other shall provide specific facts, circumstances and grounds upon which the breach is being declared.

### **3.22 Captions**

The captions contained in this Contract are intended for convenience and reference purposes only and shall in no way be deemed to define or limit any provision thereof.

### **3.23 Severability**

If any provision of this Contract is deemed invalid or unenforceable, such determination shall have no effect on the balance of the Contract, which shall be enforced and interpreted as if such provision was never included in the Contract.

### **3.24 Counterparts**

This Contract may be executed in one or more counterparts, each of which shall be deemed to be an original, but all of which together shall constitute the same Contract. Any signature page of any such counterpart may be attached or appended to any counterpart to complete a fully executed counterpart of this Contract, and shall bind such party.

### **3.25 Entire Agreement**

This Contract and the referenced appendices and attachments constitute the entire agreement between the Parties thereto and no statement, promise, condition, understanding, inducement or representation, oral or written, expressed or implied, which is not contained herein shall be binding or valid and the Contract shall not be changed, modified or altered in any manner except by an instrument in writing executed by the State and the Contractor, with all necessary approvals. Authorized Users shall not have the authority to modify the terms of the Contract, except as to better terms and pricing for a particular procurement than those set forth herein in accordance with the terms set forth in Appendix B Clauses 28, *Modification of Contract Terms*, and 32, *Purchase Orders*.


**LIFT EQUIPMENT PREVENTIVE AND  
CORRECTIVE MAINTENANCE (STATEWIDE)**

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**CONTRACT SIGNATURE PAGE**

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the dates below. The Parties further hereby certify that original copies of this executed and approved signature page will be affixed, upon final approval, to exact copies of this Agreement being executed simultaneously herewith.

**CONTRACTOR**

Signature:   
Printed Name: Catherine L. Pierce  
Title: Authorized Representative  
Company Name: Otis Elevator Co.  
Date: 3-14-17  
Federal ID: 135583389  
NYS Vendor ID \_\_\_\_\_

**THE PEOPLE OF THE STATE OF NEW YORK**

Signature:   
Printed Name: TODD GARDNER  
Title: CMS 3  
Office of General Services  
Date: 3/22/2017

LIFT EQUIPMENT PREVENTIVE AND  
CORRECTIVE MAINTENANCE (STATEWIDE)

INDIVIDUAL, CORPORATION, PARTNERSHIP, OR LLC ACKNOWLEDGMENT

STATE OF FLORIDA

}

: Sworn Statement:

COUNTY OF PALM BEACH

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On the 14<sup>th</sup> day of March in the year 2017, before me personally appeared CATHERINE L. PIERCE, known to me to be the person who executed the foregoing instrument, who, being duly sworn by me did depose and say that he maintains an office at 5500 Village Blvd., Suite 101, West Palm Beach, FL 33407.

and further that:

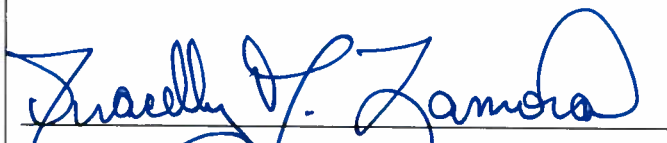
[Check One]

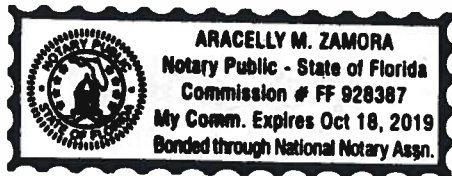
If an individual): he executed the foregoing instrument in his/her name and on his/her own behalf.

If a corporation): she is the Authorized Representative of Otis Elevator Company, the corporation described in said instrument; that, by authority of the Board of Directors of said corporation, he is authorized to execute the foregoing instrument on behalf of the corporation for purposes set forth therein; and that, pursuant to that authority, she executed the foregoing instrument in the name of and on behalf of said corporation as the act and deed of said corporation.

If a partnership): he is the \_\_\_\_\_ of \_\_\_\_\_, the partnership described in said instrument; that, by the terms of said partnership, he is authorized to execute the foregoing instrument on behalf of the partnership for purposes set forth therein; and that, pursuant to that authority, he executed the foregoing instrument in the name of and on behalf of said partnership as the act and deed of said partnership.

If a limited liability company): he is a duly authorized member of \_\_\_\_\_, LLC, the limited liability company described in said instrument; that, he is authorized to execute the foregoing instrument on behalf of the limited liability company for purposes set forth therein; and that, pursuant to that authority, he executed the foregoing instrument in the name of and on behalf of said limited liability company as the act and deed of said limited liability company.

  
\_\_\_\_\_  
Signature of Notary Public  
Notary Public Registration No: FF 928387 State of Florida



**STATE OF NEW YORK  
OFFICE OF GENERAL SERVICES  
FIRST CONTRACT AMENDMENT**

**WITH**

**Otis Elevator Company  
Group 71004, Award 22913, Contract # NO. PS924AA**

<b>Elevator, Escalator &amp; Miscellaneous Lift Equipment Preventive and Corrective Maintenance (Statewide)</b>
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**THIS FIRST CONTRACT AMENDMENT** (hereinafter "First Amendment") is made to Contract No. PS924AA (hereinafter "Contract") by and between the People of the State of New York, acting by and through the Commissioner of General Services (hereinafter "State" or "OGS") whose principal place of business is the 36th Floor, Corning Tower, The Governor Nelson A. Rockefeller Empire State Plaza, Albany, New York 12242, pursuant to authority granted under New York State Finance Law §163, and Otis Elevator Company (hereinafter "Contractor"), with its principal place of business at 20 Loudonville Road, Albany, NY 12204. The State and the Contractor are individually referred to as the "Party" and collectively referred to as the "Parties."

**WITNESSETH:**

**WHEREAS**, OGS and Contractor entered into the Contract, effective March 22, 2017, for the acquisition of Elevator, Escalator & Miscellaneous Lift Equipment Preventive and Corrective Maintenance (Statewide);

**WHEREAS**, the Contract is scheduled to expire on April 19, 2021;

**WHEREAS**, OGS seeks to amend the Contract to extend the Contract term for an additional two (2) year period, through and including April 19, 2023 in accordance with Section 3.1 of the Contract, Term of Contract, and Section 57, Contract Term – Renewal, of Appendix B, Office of General Services General Specifications, or until OGS awards a new contract for Elevator, Escalator & Miscellaneous Lift Equipment Preventive and Corrective Maintenance, whichever occurs first;

**WHEREAS**, OGS also seeks to amend certain other terms of the Contract and add certain new terms to the Contract; and

**WHEREAS**, Contractor agrees to such amendments to the Contract.

**NOW THEREFORE**, in consideration of the mutual covenants, terms and conditions herein contained, the Parties agree as follows:

**1. TERM**

Pursuant to Section 3.1 of the Contract, Term of Contract, and Section 57, Contract Term – Renewal, of Appendix B, Office of General Services General Specifications, the Contract term is extended for two (2) years through and including April 19, 2023, or until OGS awards a new contract for Elevator, Escalator & Miscellaneous Lift Equipment Preventive and Corrective Maintenance, whichever occurs first.

**2. APPENDIX A**

- a. Appendix A, Standard Clauses for New York State Contracts, dated January 2014, attached to the Contract, is hereby deleted in its entirety and replaced with the attached revised Appendix A, Standard Clauses For New York State Contracts, dated October 2019.

- b. Section 3.3, APPENDIX A, of the Contract is hereby deleted in its entirety and replaced with the following new Section 3.3:

**3.3 APPENDIX A**

Appendix A, Standard Clauses for New York State Contracts, dated October 2019, attached hereto, is hereby expressly made a part of this Contract as fully as if set forth at length herein.

- c. All references to "Appendix A," "Appendix A, Standard Clauses for New York State Contracts" or "Appendix A, Standard Clauses for New York State Contracts (January 2014)" in the Contract shall no longer refer to Appendix A, Standard Clauses for New York State Contracts, dated January 2014, but shall be deemed henceforth to refer to Appendix A, Standard Clauses For New York State Contracts, dated October 2019.

**3. APPENDIX F**

- a. The Appendices and Attachments section on Page 5 of the Contract is hereby amended to include Appendix F as follows:

**APPENDICES**

Appendix A - Standard Clauses for New York State Contracts (January 2014)

Appendix B - General Specifications (May 2015)

Appendix C - Contract Modification Procedure

Appendix D - Mini-bid Project Definition Template

Appendix E - How to Use Instructions

Appendix F - Federal Funding Agency Mandatory Terms and Conditions

**ATTACHMENTS**

Attachment 01 – Summary of Lots and Regions Awarded

Attachment 02 - Contractor's Insurance Requirements

- b. A new Section 3.25 Appendix F is added to the Contract to read as follows:

**3.25 APPENDIX F**

Appendix F, Federal Funding Agency Mandatory Terms and Conditions, is hereby attached to this Contract and expressly made a part of this Contract as fully as if set forth at length herein.

**4. CONFLICT OF TERMS AND CONDITIONS**

Section 3.8, Conflict of Terms and Conditions, of the Contract is hereby deleted in its entirety and replaced with the following new Section 3.8:

**3.8 CONFLICT OF TERMS AND CONDITIONS**

Conflicts among the documents shall be resolved in the following order of precedence:

- A. Appendix A, Standard Clauses for New York State Contracts;
- B. The Contract including all Appendices and Attachments, except for Appendix B, General Specifications and Appendix F, Federal Funding Agency Mandatory Terms and Conditions;
- C. Appendix B, General Specifications;
- D. Appendix F, Federal Funding Agency Mandatory Terms and Conditions;



## E. Any Mini-bid Agreement.

**5. CONTRACTOR REQUIREMENTS AND PROCEDURES FOR EQUAL EMPLOYMENT AND BUSINESS PARTICIPATION OPPORTUNITIES FOR MINORITY GROUP MEMBERS AND NEW YORK STATE CERTIFIED MINORITY AND WOMEN-OWNED BUSINESS ENTERPRISES AND EQUAL EMPLOYMENT OPPORTUNITIES FOR MINORITY GROUP MEMBERS AND WOMEN**

Section 3.16. Contractor Requirements and Procedures for Equal Employment and Business Participation Opportunities for Minority Group Members and New York State Certified Minority and Women-Owned Business Enterprises and Equal Employment Opportunities for Minority Group Members and Women of the Contract is hereby deleted in its entirety and replaced with the following new Section 3.16:

**3.16 CONTRACTOR REQUIREMENTS AND PROCEDURES FOR PARTICIPATION BY NEW YORK STATE CERTIFIED MINORITY- AND WOMEN-OWNED BUSINESS ENTERPRISES AND EQUAL EMPLOYMENT OPPORTUNITIES FOR MINORITY GROUP MEMBERS AND WOMEN**

## I. New York State Law

Pursuant to New York State Executive Law Article 15-A and Parts 140-145 of Title 5 of the New York Codes, Rules and Regulations ("NYCRR"), the New York State Office of General Services ("OGS") is required to promote opportunities for the maximum feasible participation of New York State-certified Minority- and Women-Owned Business Enterprises ("MWBEs") and the employment of minority group members and women in the performance of OGS contracts.

## II. General Provisions

- A. OGS is required to implement the provisions of New York State Executive Law Article 15-A and 5 NYCRR Parts 140-145 ("MWBE Regulations") for all State contracts as defined therein, with a value (1) in excess of \$25,000 for labor, services, equipment, materials, or any combination of the foregoing or (2) in excess of \$100,000 for real property renovations and construction.
- B. The Contractor agrees, in addition to any other nondiscrimination provision of the Contract and at no additional cost to OGS, to fully comply and cooperate with OGS in the implementation of New York State Executive Law Article 15-A and the regulations promulgated thereunder. These requirements include equal employment opportunities for minority group members and women ("EEO") and contracting opportunities for MWBEs. Contractor's demonstration of "good faith efforts" pursuant to 5 NYCRR § 142.8 shall be a part of these requirements. These provisions shall be deemed supplementary to, and not in lieu of, the nondiscrimination provisions required by New York State Executive Law Article 15 (the "Human Rights Law") or other applicable federal, State, or local laws.
- C. Failure to comply with all of the requirements herein may result in a finding of non-responsiveness, a finding of non-responsibility, breach of contract, withholding of funds, liquidated damages pursuant to clause IX of this section, and/or enforcement proceedings as allowed by the Contract and applicable law.

## III. Equal Employment Opportunity (EEO)

- A. The provisions of Article 15-A of the Executive Law and the rules and regulations promulgated thereunder pertaining to equal employment opportunities for minority group members and women shall apply to all Contractors, and any subcontractors, awarded a subcontract over \$25,000 for labor, services, including legal, financial and other professional services, travel, supplies, equipment, materials, or any combination of the foregoing, to be performed for, or rendered or furnished to, the contracting State agency (the "Work") except where the Work is for the beneficial use of the Contractor.
  - 1. Contractor and subcontractors shall undertake or continue existing EEO programs to ensure that minority group members and women are afforded equal employment opportunities without discrimination because of race, creed, color, national origin, sex, age, disability, or

marital status. For these purposes, EEO shall apply in the areas of recruitment, employment, job assignment, promotion, upgrading, demotion, transfer, layoff or termination, and rates of pay or other forms of compensation. This requirement does not apply to: (i) the performance of work or the provision of services or any other activity that is unrelated, separate, or distinct from the Contract; or (ii) employment outside New York State.

2. By entering into this Contract, Contractor certifies that the text set forth in clause 12 of Appendix A, attached hereto and made a part hereof, is Contractor's equal employment opportunity policy. In addition, Contractor agrees to comply with the Non-Discrimination Requirements set forth in clause 5 of Appendix A.

B. Form EEO 100 – Staffing Plan

To ensure compliance with this section, the Contractor agrees to submit, or has submitted with the Bid, a staffing plan on Form EEO 100 to OGS to document the composition of the proposed workforce to be utilized in the performance of the Contract by the specified categories listed, including ethnic background, gender, and federal occupational categories.

C. Form EEO - 101 - Workforce Utilization Reporting Form (Commodities and Services) ("Form EEO-101-Commodities and Services")

1. The Contractor shall submit, and shall require each of its subcontractors to submit, a Form EEO-101-Commodities and Services to OGS to report the actual workforce utilized in the performance of the Contract by the specified categories listed including ethnic background, gender, and Federal occupational categories. The Form EEO-101-Commodities and Services must be submitted electronically to OGS at [EEO\\_CentCon@ogs.ny.gov](mailto:EEO_CentCon@ogs.ny.gov) on a quarterly basis during the term of the Contract by the 10th day of April, July, October, and January.
2. Separate forms shall be completed by Contractor and all subcontractors.
3. In limited instances, the Contractor or subcontractor may not be able to separate out the workforce utilized in the performance of the Contract from its total workforce. When a separation can be made, the Contractor or subcontractor shall submit the Form EEO-101-Commodities and Services and indicate that the information provided relates to the actual workforce utilized on the Contract. When the workforce to be utilized on the Contract cannot be separated out from the Contractor's or subcontractor's total workforce, the Contractor or subcontractor shall submit the Form EEO-101-Commodities and Services and indicate that the information provided is the Contractor's or subcontractor's total workforce during the subject time frame, not limited to work specifically performed under the Contract.

- D. Contractor shall comply with the provisions of the Human Rights Law and all other State and federal statutory and constitutional non-discrimination provisions. Contractor and subcontractors shall not discriminate against any employee or applicant for employment because of race, creed (religion), color, sex, national origin, sexual orientation, military status, age, disability, predisposing genetic characteristic, marital status, or domestic violence victim status, and shall also follow the requirements of the Human Rights Law with regard to non-discrimination on the basis of prior criminal and conviction and prior arrest.

IV. Contract Goals

- A. OGS hereby establishes an overall goal of 10% for MWBE participation, 5% for Minority-Owned Business Enterprises ("MBE") participation and 5% for Women-Owned Business Enterprises ("WBE") participation (based on the current availability of qualified MBEs and WBEs). The total Contract goal can be obtained by utilizing any combination of MBE and /or WBE participation for subcontracting and supplies acquired under the Contract.
- B. For purposes of providing meaningful participation by MWBEs on the Contract and achieving the Contract goals established in clause IV-A hereof, Contractor should reference the directory of New York State Certified MWBEs found at the following internet address: <https://ny.newnycontracts.com/FrontEnd/VendorSearchPublic.asp?TN=ny&XID=2528>. The

MWBE Regulations are located at 5 NYCRR § 140 – 145. Questions regarding compliance with MWBE participation goals should be directed to the Designated Contacts within the OGS Office of Minority- and Women Owned Businesses Enterprises. Additionally, following Contract execution, Contractor is encouraged to contact the Division of Minority and Women's Business Development ((518) 292-5250; (212) 803-2414; or (716) 846-8200) to discuss additional methods of maximizing participation by MWBEs on the Contract.

- C. Contractor must document "good faith efforts" to provide meaningful participation by MWBEs as subcontractors or suppliers in the performance of the Contract (see clause VII below).

V. MWBE Utilization Plan

- A. In accordance with 5 NYCRR § 142.4, Bidders are required to submit a completed Utilization Plan on Form MWBE 100 with their bid.
- B. The Utilization Plan shall list the MWBEs the Bidder intends to use to perform the Contract, a description of the Contract scope of work the Bidder intends the MWBE to perform to meet the goals on the Contract, the estimated or, if known, actual dollar amounts to be paid to an MWBE. By signing the Utilization Plan, the Bidder acknowledges that making false representations or including information evidencing a lack of good faith as part of, or in conjunction with, the submission of a Utilization Plan is prohibited by law and may result in penalties including, but not limited to, termination of a contract for cause, loss of eligibility to submit future bids, and/or withholding of payments. Any modifications or changes to the agreed participation by New York State Certified MWBEs after the Contract award and during the term of the Contract must be reported on a revised MWBE Utilization Plan and submitted to OGS.
- C. By entering into the Contract, Bidder/Contractor understands that only sums paid to MWBEs for the performance of a commercially useful function, as that term is defined in 5 NYCRR § 140.1, may be applied towards the achievement of the applicable MWBE participation goal. When an MWBE is serving as a broker on the Contract, only 25 percent of all sums paid to a broker shall be deemed to represent the commercially useful function performed by the MWBE.
- D. OGS will review the submitted MWBE Utilization Plan and advise the Bidder of OGS acceptance or issue a notice of deficiency within 30 days of receipt.
- E. If a notice of deficiency is issued; Bidder agrees that it shall respond to the notice of deficiency, within seven (7) business days of receipt, by submitting to OGS a written remedy in response to the notice of deficiency. If the written remedy that is submitted is not timely or is found by OGS to be inadequate, OGS shall notify the Bidder and direct the Bidder to submit, within five (5) business days of notification by OGS, a request for a partial or total waiver of MWBE participation goals on Form BDC 333. Failure to file the waiver form in a timely manner may be grounds for disqualification of the bid or proposal.
- F. OGS may disqualify a Bidder's bid/proposal as being non-responsive under the following circumstances:
  - (a) If a Bidder fails to submit an MWBE Utilization Plan;
  - (b) If a Bidder fails to submit a written remedy to a notice of deficiency;
  - (c) If a Bidder fails to submit a request for waiver; or
  - (d) If OGS determines that the Bidder has failed to document good faith efforts.
- G. If awarded a Contract, Contractor certifies that it will follow the submitted MWBE Utilization Plan for the performance of MWBEs on the Contract pursuant to the prescribed MWBE goals set forth in clause IV-A of this Section.
- H. Bidder/Contractor further agrees that a failure to submit and/or use such completed MWBE Utilization Plan shall constitute a material breach of the terms of the Contract. Upon the occurrence of such a material breach, OGS shall be entitled to any remedy provided herein, including but not limited to, a finding of Contractor non-responsiveness.

**VI. Request for Waiver**

- A. Prior to submission of a request for a partial or total waiver, Bidder shall contact the Designated Contacts listed on page 1 of this document for guidance.
- B. In accordance with 5 NYCRR § 142.7, a Bidder/Contractor who is able to document good faith efforts to meet the goal requirements, as set forth in clause VII below, may submit a request for a partial or total waiver on Form BDC 333, accompanied by supporting documentation. A Bidder may submit the request for waiver at the same time it submits its MWBE Utilization Plan. If a request for waiver is submitted with the MWBE Utilization Plan and is not accepted by OGS at that time, the provisions of clauses V(C), (D) & (E) will apply. If the documentation included with the Bidder's/Contractor's waiver request is complete, OGS shall evaluate the request and issue a written notice of acceptance or denial within twenty (20) business days of receipt.
- C. Contractor shall attempt to utilize, in good faith, any MBE or WBE identified within its MWBE Utilization Plan, during the performance of the Contract. Requests for a partial or total waiver of established goal requirements made subsequent to Contract award may be made at any time during the term of the Contract to OGS but must be made no later than prior to the submission of a request for final payment on the Contract.
- D. If OGS, upon review of the MWBE Utilization Plan and Monthly MWBE Contractor Compliance Reports determines that Contractor is failing or refusing to comply with the contract goals and no waiver has been issued in regards to such non-compliance, OGS may issue a notice of deficiency to the Contractor. The Contractor must respond to the notice of deficiency within seven (7) business days of receipt. Such response may include a request for partial or total waiver of MWBE contract goals.

**VII. Required Good Faith Efforts**

In accordance with 5 NYCRR § 142.8, Contractors must document their good faith efforts toward utilizing MWBEs on the Contract. Evidence of required good faith efforts shall include, but not be limited to, the following:

1. A list of the general circulation, trade and MWBE-oriented publications and dates of publications in which the Contractor solicited the participation of certified MWBEs as subcontractors/suppliers, copies of such solicitations and any responses thereto.
2. A list of the certified MWBEs appearing in the Empire State Development ("ESD") MWBE directory that were solicited for this Contract. Provide proof of dates or copies of the solicitations and copies of the responses made by the certified MWBEs. Describe specific reasons that responding certified MWBEs were not selected.
3. Descriptions of the Contract documents/plans/specifications made available to certified MWBEs by the Contractor when soliciting their participation and steps taken to structure the scope of work for the purpose of subcontracting with, or obtaining supplies from, certified MWBEs.
4. A description of the negotiations between the Contractor and certified MWBEs for the purposes of complying with the MWBE goals of this Contract.
5. Dates of any pre-bid, pre-award or other meetings attended by Contractor, if any, scheduled by OGS with certified MWBEs whom OGS determined were capable of fulfilling the MWBE goals set in the Contract.
6. Other information deemed relevant to the request.

**VIII. Monthly MWBE Contractor Compliance Report**

- A. In accordance with 5 NYCRR § 142.10, Contractor is required to report Monthly MWBE Contractor Compliance to OGS during the term of the Contract for the preceding month's activity, documenting progress made towards achievement of the Contract MWBE goals. OGS requests that all Contractors use the New York State Contract System ("NYSCS") to report subcontractor and supplier payments made by Contractor to MWBEs performing work under the Contract. The NYSCS may be accessed at <https://ny.newnycontracts.com/>. This is a New York

State-based system that all State agencies and authorities will be implementing to ensure uniform contract compliance reporting throughout New York State.

- B. When a Contractor receives a payment from a State agency, it is the Contractor's responsibility to pay its subcontractors and suppliers in a timely manner. On or after the first day of each month, the Contractor will receive an email or fax notification ("audit notice") indicating that a representative of its company needs to log-in to the NYSCS to report the company's MWBE subcontractor and supplier payments for the preceding month. The Contractor must also report when no payments have been made to a subcontractor or supplier in a particular month with entry of a zero dollar value in the NYSCS. Once subcontractor and supplier payments have been entered into the NYSCS, the subcontractor(s) and supplier(s) will receive an email or fax notification advising them to log into the NYSCS to confirm that they actually received the reported payments from the Contractor. It is the Contractor's responsibility to educate its MWBE subcontractors and suppliers about the NYSCS and the need to confirm payments made to them in the NYSCS.
  - C. To assist in the use of the NYSCS, OGS recommends that all Contractors and MWBE subcontractors and suppliers sign up for the following two webinar trainings offered through the NYSCS: "**Introduction to the System - Vendor training**" and "**Contract Compliance Reporting - Vendor Training**" to become familiar with the NYSCS. To view the training schedule and to register visit: <https://ny.newnycontracts.com/FrontEnd/TrainingList.asp>
  - D. As soon as possible after the Contract is approved, Contractor should visit <https://ny.newnycontracts.com> and click on "**Account Lookup**" to identify the Contractor's account by company name. Contact information should be reviewed and updated if necessary by choosing "**Change Info.**" It is important that the staff member who is responsible for reporting payment information for the Contractor be listed as a user in the NYSCS. Users who are not already listed may be added through "**Request New User.**" When identifying the person responsible, please add "**- MWBE Contact**" after his or her last name (i.e., John Doe – MWBE Contact) to ensure that the correct person receives audit notices from the NYSCS. NYSCS Technical Support should be contacted for any technical support questions by clicking on the links for "**Contact Us & Support**" then "**Technical Support**" on the NYSCS website.
  - E. If Contractor is unable to report MWBE Contractor Compliance via the NYSCS, Contractor must submit a Monthly MWBE Contractor Compliance Report on Form MWBE 102 to OGS, by the 10th day of each month during the term of the Contract, for the preceding month's activity to: OGS MWBE Office, 29<sup>th</sup> floor Corning Tower, Empire State Plaza, Albany, NY 12242. Phone: 518-486-9284; Fax: 518-486-9285.
  - F. It is the Contractor's responsibility to report subcontractor and supplier payments. Failure to respond to payment audits in a timely fashion through the NYSCS, or by paper to OGS, may jeopardize future payments pursuant to the MWBE liquidated damages clause in clause IX below.
- IX. Breach of Contract and Liquidated Damages
- A. Where OGS determines that the Contractor is not in compliance with the requirements of this Contract, and the Contractor refuses to comply with such requirements, or if it is found to have willfully and intentionally failed to comply with the MWBE participation goals set forth in the Contract, the Contractor shall be obligated to pay liquidated damages to OGS.
  - B. Such liquidated damages shall be calculated as an amount equaling the difference between:
    - 1. All sums identified for payment to MWBEs had the Contractor achieved the contractual MWBE goals; and
    - 2. All sums actually paid to MWBEs for work performed or materials supplied under the Contract.
  - C. If OGS determines that Contractor is liable for liquidated damages and such identified sums have not been withheld by OGS, Contractor shall pay such liquidated damages to OGS within sixty (60) days after they are assessed. Provided, however, that if the Contractor has filed a complaint with the Director of the Division of Minority and Women's Business Development

pursuant to 5 NYCRR § 142.12, liquidated damages shall be payable only in the event of a determination adverse to the Contractor following the complaint process.

X. Fraud

Any suspicion of fraud, waste, or abuse involving the contracting or certification of MWBEs shall be immediately reported to ESD's Division of Minority and Women's Business Development at (855) 373-4692.

ALL FORMS ARE AVAILABLE AT: <https://ogs.ny.gov/MWBE>

**6. PARTICIPATION OPPORTUNITIES FOR NEW YORK STATE CERTIFIED SERVICE-DISABLED VETERAN OWNED BUSINESSES**

**A new Section 3.26 Participation Opportunities for New York State Certified Service-Disabled Veteran Owned Businesses is hereby added to the Contract to read as follows:**

**3.26 PARTICIPATION OPPORTUNITIES FOR NEW YORK STATE CERTIFIED SERVICE-DISABLED VETERAN OWNED BUSINESSES**

Article 17-B of the New York State Executive Law provides for more meaningful participation in public procurement by certified Service-Disabled Veteran-Owned Businesses ("SDVOB"), thereby further integrating such businesses into New York State's economy. OGS recognizes the need to promote the employment of service-disabled veterans and to ensure that certified service-disabled veteran-owned businesses have opportunities for maximum feasible participation in the performance of OGS contracts.

In recognition of the service and sacrifices made by service-disabled veterans and in recognition of their economic activity in doing business in New York State, Bidders are expected to consider SDVOBs in the fulfillment of the requirements of the Contract. Such participation may be as subcontractors or suppliers, as protégés, or in other partnering or supporting roles.

For purposes of this procurement, OGS conducted a comprehensive search and determined that the Contract does not offer sufficient opportunities to set specific goals for participation by SDVOBs as subcontractors, service providers, and suppliers to Contractor. Nevertheless, Bidder/Contractor is encouraged to make good faith efforts to promote and assist in the participation of SDVOBs on the Contract for the provision of services and materials. The directory of New York State Certified SDVOBs can be viewed at: <https://ogs.ny.gov/Veterans/>

Bidder/Contractor is encouraged to contact the Office of General Services' Division of Service-Disabled Veteran's Business Development at 518-474-2015 or [VeteranDevelopment@ogs.ny.gov](mailto:VeteranDevelopment@ogs.ny.gov) to discuss methods of maximizing participation by SDVOBs on the Contract.

ALL FORMS ARE AVAILABLE AT: <https://ogs.ny.gov/Veterans/>

**7. STAFFING**

Section 2.18 Staffing of the Contract is hereby deleted in its entirety and replaced with the following new Section 2.18:

**2.18 STAFFING**

All work under the Contract shall be performed by skilled, competent, and as applicable, licensed journeyman elevator mechanics directly employed or supervised by the Contractor or an approved subcontractor both of whom shall be licensed as applicable. Elevator mechanic helpers may be used, provided they are under the direct supervision of a journeyman elevator mechanic on site at all times. Direct supervision means working under constant guidance or simultaneously with a journeyman elevator mechanic. All journeyman elevator mechanics also shall have a minimum of three (3) years of experience

maintaining Lift Equipment. Sufficient personnel shall be assigned to meet the requirements of the Mini-bid Project Definition.

If required in the Mini-bid Project Definition, the Contractor shall provide proposed staffing information with their Mini-bid response (including but not limited to the names of Elevator Mechanics, their years of experience, etc) that may be evaluated by the Authorized User as part of their award methodology.

Contractor shall provide proof of any required licensing to Authorized Users with their Mini-Bid responses and upon request by the Authorized User any time during the term of the awarded Mini-Bid.

#### **On-Site Mechanic**

When the scope of the Mini-bid Project Definition justifies a continuous presence at the work site to perform preventive maintenance and minor corrective maintenance, the Authorized User may require that an on-site mechanic be stationed at the facility for a specified amount of time each work day. All requirements for an on-site mechanic, including the minimum amount of time that the mechanic must be present, shall be specified in the Mini-bid Project Definition. All costs for the Onsite Mechanic shall be included in the Monthly Maintenance Fee bid, and no additional reimbursement will be made for the On-site Mechanic.

#### **Scheduled Building Shutdowns**

An elevator technician or mechanic shall be required to be on site during all building shutdowns. Scheduled shutdowns typically occur during non-business hours (i.e.: 5:00 pm to 7:00 am business days, 24 hours on weekends and holidays), last for a duration of approximately eight hours and there are typically two scheduled building shutdowns each year. The cost of labor for shutdowns will be included in the price bid for the Monthly Maintenance Fee.

#### **Access for Repairs to Equipment Located Near Lift Equipment**

Should equipment (including but not limited to security systems or fire alarms) located in or near Lift Equipment require assistance with access, the Contractor shall provide an elevator mechanic who will be on site to assist with access, and the cost of this assistance shall be paid for based on the actual hours worked, (not including travel time) and the Labor Markup Rate.

### **8. Entire Agreement**

Section 3.25 Entire Agreement of the Contract is renumbered as Section 3.27 as follows:

#### **3.27 ENTIRE AGREEMENT**

This Contract and the referenced appendices and attachments constitute the entire agreement between the Parties thereto and no statement, promise, condition, understanding, inducement or representation, oral or written, expressed or implied, which is not contained herein shall be binding or valid and the Contract shall not be changed, modified or altered in any manner except by an instrument in writing executed by the State and the Contractor, with all necessary approvals. Authorized Users shall not have the authority to modify the terms of the Contract, except as to better terms and pricing for a particular procurement than those set forth herein in accordance with the terms set forth in Appendix B Clauses 28, Modification of Contract Terms, and 32, Purchase Orders.

**9. SEVERABILITY**

In the event that any one or more of the provisions of this First Amendment shall for any reason be declared unenforceable under the laws or regulations in force, such provision will not have any effect on the validity of the remainder of this First Amendment, which shall then be construed as if such unenforceable provision had never been written or was never contained in this First Amendment.

**10.** Except as herein modified, all other terms and conditions of the Contract shall remain in full force and effect.



Signature Page

IN WITNESS WHEREOF, the Parties have executed this First Amendment as of the date last written below. The Parties further hereby certify that original copies of this executed and approved signature page will be affixed, upon final approval, to exact copies of this First Amendment being executed simultaneously herewith. The acknowledgment must be fully and properly executed by an authorized person. By signing you certify your express authority to sign on behalf of yourself, your company, or other entity and full knowledge and acceptance of this First Amendment, Appendix A (October, 2019) (Standard Clauses For New York State Contracts), Appendix B (May, 2015), Appendix F Federal Funding Agency Mandatory Terms and Conditions and State Finance Law §139-j and §139-k (Procurement Lobbying), and that all information provided is complete, true and accurate. By signing, Contractor affirms that it understands and agrees to comply with the procedures relative to permissible contacts as required by State Finance Law §139-j (3) and §139-j (6) (b).

OTIS ELEVATOR COMPANY

THE PEOPLE OF THE STATE OF NEW YORK  
ACTING BY AND THROUGH THE COMMISSIONER  
OF GENERAL SERVICES

Signature: 

Signature: 

Printed Name: Catherine L. Pierce  
Authorized Representative

Printed Name: Wendy Reitzel

Title: \_\_\_\_\_

Title: Director

Federal ID: 13-5583389 \_\_\_\_\_

Date: 04/12/2021

NYS Vendor ID: #1000027133 \_\_\_\_\_

Date: 2-25-2021

**NOTICE: This First Amendment becomes effective once OGS approves and an authorized signatory executes. OGS will then post a notification to its website in the form of a Contract Award Notification Update.**

**CORPORATION, PARTNERSHIP, OR LLC ACKNOWLEDGMENT**

STATE OF Florida }

: Sworn Statement:

COUNTY OF West Palm }

On the 25 day of Feb in the year 2021, before me personally appeared Catherine L Piers, known to me to be the person who executed the foregoing instrument, who, being duly sworn by me did depose and say that she maintains an office at

Town of Palm Beach garden

County of West Palm, State of FL; and further that:

[Check One]

If an individual): he executed the foregoing instrument in his/her name and on his/her own behalf.

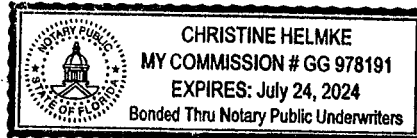
If a corporation): she is the Authorized Rep of Otis Elevator, the corporation described in said instrument; that, by authority of the Board of Directors of said corporation, she is authorized to execute the foregoing instrument on behalf of the corporation for purposes set forth therein; and that, pursuant to that authority she executed the foregoing instrument in the name of and on behalf of said corporation as the act and deed of said corporation.

If a partnership): he is the \_\_\_\_\_ of \_\_\_\_\_, the partnership described in said instrument; that, by the terms of said partnership, he is authorized to execute the foregoing instrument on behalf of the partnership for purposes set forth therein; and that, pursuant to that authority, he executed the foregoing instrument in the name of and on behalf of said partnership as the act and deed of said partnership.

If a limited liability company): he is a duly authorized member of \_\_\_\_\_, LLC, the limited liability company described in said instrument; that, he is authorized to execute the foregoing instrument on behalf of the limited liability company for purposes set forth therein; and that, pursuant to that authority, he executed the foregoing instrument in the name of and on behalf of said limited liability company as the act and deed of said limited liability company.

Christine Helmke

Signature of Notary Public



Notary Public Registration No. GG 978191 State Florida

**APPENDIX A**

**STANDARD CLAUSES FOR NEW YORK STATE CONTRACTS**

**PLEASE RETAIN THIS DOCUMENT  
FOR FUTURE REFERENCE.**

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**STANDARD CLAUSES FOR NYS CONTRACTS**

The parties to the attached contract, license, lease, amendment or other agreement of any kind (hereinafter, "the contract" or "this contract") agree to be bound by the following clauses which are hereby made a part of the contract (the word "Contractor" herein refers to any party other than the State, whether a contractor, licensor, licensee, lessor, lessee or any other party):

**1. EXECUTORY CLAUSE.** In accordance with Section 41 of the State Finance Law, the State shall have no liability under this contract to the Contractor or to anyone else beyond funds appropriated and available for this contract.

**2. NON-ASSIGNMENT CLAUSE.** In accordance with Section 138 of the State Finance Law, this contract may not be assigned by the Contractor or its right, title or interest therein assigned, transferred, conveyed, sublet or otherwise disposed of without the State's previous written consent, and attempts to do so are null and void. Notwithstanding the foregoing, such prior written consent of an assignment of a contract let pursuant to Article XI of the State Finance Law may be waived at the discretion of the contracting agency and with the concurrence of the State Comptroller where the original contract was subject to the State Comptroller's approval, where the assignment is due to a reorganization, merger or consolidation of the Contractor's business entity or enterprise. The State retains its right to approve an assignment and to require that any Contractor demonstrate its responsibility to do business with the State. The Contractor may, however, assign its right to receive payments without the State's prior written consent unless this contract concerns Certificates of Participation pursuant to Article 5-A of the State Finance Law.

**3. COMPTROLLER'S APPROVAL.** In accordance with Section 112 of the State Finance Law (or, if this contract is with the State University or City University of New York, Section 355 or Section 6218 of the Education Law), if this contract exceeds \$50,000 (or the minimum thresholds agreed to by the Office of the State Comptroller for certain S.U.N.Y. and C.U.N.Y. contracts), or if this is an amendment for any amount to a contract which, as so amended, exceeds said statutory amount, or if, by this contract, the State agrees to give something other than money when the value or reasonably estimated value of such consideration exceeds \$25,000, it shall not be valid, effective or binding upon the State until it has been approved by the State Comptroller and filed in his office. Comptroller's approval of contracts let by the Office of General Services is required when such contracts exceed \$85,000 (State Finance Law § 163.6-a). However, such pre-approval shall not be required for any contract established as a centralized contract through the Office of General Services or for a purchase order or other transaction issued under such centralized contract.

**4. WORKERS' COMPENSATION BENEFITS.** In accordance with Section 142 of the State Finance Law, this contract shall be void and of no force and effect unless the

Contractor shall provide and maintain coverage during the life of this contract for the benefit of such employees as are required to be covered by the provisions of the Workers' Compensation Law.

**5. NON-DISCRIMINATION REQUIREMENTS.** To the extent required by Article 15 of the Executive Law (also known as the Human Rights Law) and all other State and Federal statutory and constitutional non-discrimination provisions, the Contractor will not discriminate against any employee or applicant for employment, nor subject any individual to harassment, because of age, race, creed, color, national origin, sexual orientation, gender identity or expression, military status, sex, disability, predisposing genetic characteristics, familial status, marital status, or domestic violence victim status or because the individual has opposed any practices forbidden under the Human Rights Law or has filed a complaint, testified, or assisted in any proceeding under the Human Rights Law. Furthermore, in accordance with Section 220-e of the Labor Law, if this is a contract for the construction, alteration or repair of any public building or public work or for the manufacture, sale or distribution of materials, equipment or supplies, and to the extent that this contract shall be performed within the State of New York, Contractor agrees that neither it nor its subcontractors shall, by reason of race, creed, color, disability, sex, or national origin: (a) discriminate in hiring against any New York State citizen who is qualified and available to perform the work; or (b) discriminate against or intimidate any employee hired for the performance of work under this contract. If this is a building service contract as defined in Section 230 of the Labor Law, then, in accordance with Section 239 thereof, Contractor agrees that neither it nor its subcontractors shall by reason of race, creed, color, national origin, age, sex or disability: (a) discriminate in hiring against any New York State citizen who is qualified and available to perform the work; or (b) discriminate against or intimidate any employee hired for the performance of work under this contract. Contractor is subject to fines of \$50.00 per person per day for any violation of Section 220-e or Section 239 as well as possible termination of this contract and forfeiture of all moneys due hereunder for a second or subsequent violation.

**6. WAGE AND HOURS PROVISIONS.** If this is a public work contract covered by Article 8 of the Labor Law or a building service contract covered by Article 9 thereof, neither Contractor's employees nor the employees of its subcontractors may be required or permitted to work more than the number of hours or days stated in said statutes, except as otherwise provided in the Labor Law and as set forth in prevailing wage and supplement schedules issued by the State Labor Department. Furthermore, Contractor and its subcontractors must pay at least the prevailing wage rate and pay or provide the prevailing supplements, including the premium rates for overtime pay, as determined by the State Labor Department in accordance with the Labor Law. Additionally, effective April 28, 2008, if this is a public work contract covered by Article 8 of the Labor Law, the Contractor understands and agrees that the filing of payrolls in a manner consistent with Subdivision 3-

a of Section 220 of the Labor Law shall be a condition precedent to payment by the State of any State approved sums due and owing for work done upon the project.

**7. NON-COLLUSIVE BIDDING CERTIFICATION.** In accordance with Section 139-d of the State Finance Law, if this contract was awarded based upon the submission of bids, Contractor affirms, under penalty of perjury, that its bid was arrived at independently and without collusion aimed at restricting competition. Contractor further affirms that, at the time Contractor submitted its bid, an authorized and responsible person executed and delivered to the State a non-collusive bidding certification on Contractor's behalf.

**8. INTERNATIONAL BOYCOTT PROHIBITION.** In accordance with Section 220-f of the Labor Law and Section 139-h of the State Finance Law, if this contract exceeds \$5,000, the Contractor agrees, as a material condition of the contract, that neither the Contractor nor any substantially owned or affiliated person, firm, partnership or corporation has participated, is participating, or shall participate in an international boycott in violation of the federal Export Administration Act of 1979 (50 USC App. Sections 2401 et seq.) or regulations thereunder. If such Contractor, or any of the aforesaid affiliates of Contractor, is convicted or is otherwise found to have violated said laws or regulations upon the final determination of the United States Commerce Department or any other appropriate agency of the United States subsequent to the contract's execution, such contract, amendment or modification thereto shall be rendered forfeit and void. The Contractor shall so notify the State Comptroller within five (5) business days of such conviction, determination or disposition of appeal (2 NYCRR § 105.4).

**9. SET-OFF RIGHTS.** The State shall have all of its common law, equitable and statutory rights of set-off. These rights shall include, but not be limited to, the State's option to withhold for the purposes of set-off any moneys due to the Contractor under this contract up to any amounts due and owing to the State with regard to this contract, any other contract with any State department or agency, including any contract for a term commencing prior to the term of this contract, plus any amounts due and owing to the State for any other reason including, without limitation, tax delinquencies, fee delinquencies or monetary penalties relative thereto. The State shall exercise its set-off rights in accordance with normal State practices including, in cases of set-off pursuant to an audit, the finalization of such audit by the State agency, its representatives, or the State Comptroller.

**10. RECORDS.** The Contractor shall establish and maintain complete and accurate books, records, documents, accounts and other evidence directly pertinent to performance under this contract (hereinafter, collectively, the "Records"). The Records must be kept for the balance of the calendar year in which they were made and for six (6) additional years thereafter. The State Comptroller, the Attorney General and any other person or entity authorized to conduct an examination, as well as the

agency or agencies involved in this contract, shall have access to the Records during normal business hours at an office of the Contractor within the State of New York or, if no such office is available, at a mutually agreeable and reasonable venue within the State, for the term specified above for the purposes of inspection, auditing and copying. The State shall take reasonable steps to protect from public disclosure any of the Records which are exempt from disclosure under Section 87 of the Public Officers Law (the "Statute") provided that: (i) the Contractor shall timely inform an appropriate State official, in writing, that said records should not be disclosed; and (ii) said records shall be sufficiently identified; and (iii) designation of said records as exempt under the Statute is reasonable. Nothing contained herein shall diminish, or in any way adversely affect, the State's right to discovery in any pending or future litigation.

**11. IDENTIFYING INFORMATION AND PRIVACY NOTIFICATION.**

(a) Identification Number(s). Every invoice or New York State Claim for Payment submitted to a New York State agency by a payee, for payment for the sale of goods or services or for transactions (e.g., leases, easements, licenses, etc.) related to real or personal property must include the payee's identification number. The number is any or all of the following: (i) the payee's Federal employer identification number, (ii) the payee's Federal social security number, and/or (iii) the payee's Vendor Identification Number assigned by the Statewide Financial System. Failure to include such number or numbers may delay payment. Where the payee does not have such number or numbers, the payee, on its invoice or Claim for Payment, must give the reason or reasons why the payee does not have such number or numbers.

(b) Privacy Notification. (1) The authority to request the above personal information from a seller of goods or services or a lessor of real or personal property, and the authority to maintain such information, is found in Section 5 of the State Tax Law. Disclosure of this information by the seller or lessor to the State is mandatory. The principal purpose for which the information is collected is to enable the State to identify individuals, businesses and others who have been delinquent in filing tax returns or may have understated their tax liabilities and to generally identify persons affected by the taxes administered by the Commissioner of Taxation and Finance. The information will be used for tax administration purposes and for any other purpose authorized by law. (2) The personal information is requested by the purchasing unit of the agency contracting to purchase the goods or services or lease the real or personal property covered by this contract or lease. The information is maintained in the Statewide Financial System by the Vendor Management Unit within the Bureau of State Expenditures, Office of the State Comptroller, 110 State Street, Albany, New York 12236.

**12. EQUAL EMPLOYMENT OPPORTUNITIES FOR MINORITIES AND WOMEN.**

In accordance with Section 312 of the Executive Law and 5 NYCRR Part 143, if this contract is: (i) a written agreement or purchase order instrument, providing for a total expenditure in excess of

\$25,000.00, whereby a contracting agency is committed to expend or does expend funds in return for labor, services, supplies, equipment, materials or any combination of the foregoing, to be performed for, or rendered or furnished to the contracting agency; or (ii) a written agreement in excess of \$100,000.00 whereby a contracting agency is committed to expend or does expend funds for the acquisition, construction, demolition, replacement, major repair or renovation of real property and improvements thereon; or (iii) a written agreement in excess of \$100,000.00 whereby the owner of a State assisted housing project is committed to expend or does expend funds for the acquisition, construction, demolition, replacement, major repair or renovation of real property and improvements thereon for such project, then the following shall apply and by signing this agreement the Contractor certifies and affirms that it is Contractor's equal employment opportunity policy that:

(a) The Contractor will not discriminate against employees or applicants for employment because of race, creed, color, national origin, sex, age, disability or marital status, shall make and document its conscientious and active efforts to employ and utilize minority group members and women in its work force on State contracts and will undertake or continue existing programs of affirmative action to ensure that minority group members and women are afforded equal employment opportunities without discrimination. Affirmative action shall mean recruitment, employment, job assignment, promotion, upgradings, demotion, transfer, layoff, or termination and rates of pay or other forms of compensation;

(b) at the request of the contracting agency, the Contractor shall request each employment agency, labor union, or authorized representative of workers with which it has a collective bargaining or other agreement or understanding, to furnish a written statement that such employment agency, labor union or representative will not discriminate on the basis of race, creed, color, national origin, sex, age, disability or marital status and that such union or representative will affirmatively cooperate in the implementation of the Contractor's obligations herein; and

(c) the Contractor shall state, in all solicitations or advertisements for employees, that, in the performance of the State contract, all qualified applicants will be afforded equal employment opportunities without discrimination because of race, creed, color, national origin, sex, age, disability or marital status.

Contractor will include the provisions of "a," "b," and "c" above, in every subcontract over \$25,000.00 for the construction, demolition, replacement, major repair, renovation, planning or design of real property and improvements thereon (the "Work") except where the Work is for the beneficial use of the Contractor. Section 312 does not apply to: (i) work, goods or services unrelated to this contract; or (ii) employment outside New York State. The State shall consider compliance by a contractor or subcontractor with the requirements of any federal law concerning equal employment opportunity which effectuates the purpose of this clause. The

contracting agency shall determine whether the imposition of the requirements of the provisions hereof duplicate or conflict with any such federal law and if such duplication or conflict exists, the contracting agency shall waive the applicability of Section 312 to the extent of such duplication or conflict. Contractor will comply with all duly promulgated and lawful rules and regulations of the Department of Economic Development's Division of Minority and Women's Business Development pertaining hereto.

**13. CONFLICTING TERMS.** In the event of a conflict between the terms of the contract (including any and all attachments thereto and amendments thereof) and the terms of this Appendix A, the terms of this Appendix A shall control.

**14. GOVERNING LAW.** This contract shall be governed by the laws of the State of New York except where the Federal supremacy clause requires otherwise.

**15. LATE PAYMENT.** Timeliness of payment and any interest to be paid to Contractor for late payment shall be governed by Article 11-A of the State Finance Law to the extent required by law.

**16. NO ARBITRATION.** Disputes involving this contract, including the breach or alleged breach thereof, may not be submitted to binding arbitration (except where statutorily authorized), but must, instead, be heard in a court of competent jurisdiction of the State of New York.

**17. SERVICE OF PROCESS.** In addition to the methods of service allowed by the State Civil Practice Law & Rules ("CPLR"), Contractor hereby consents to service of process upon it by registered or certified mail, return receipt requested. Service hereunder shall be complete upon Contractor's actual receipt of process or upon the State's receipt of the return thereof by the United States Postal Service as refused or undeliverable. Contractor must promptly notify the State, in writing, of each and every change of address to which service of process can be made. Service by the State to the last known address shall be sufficient. Contractor will have thirty (30) calendar days after service hereunder is complete in which to respond.

**18. PROHIBITION ON PURCHASE OF TROPICAL HARDWOODS.** The Contractor certifies and warrants that all wood products to be used under this contract award will be in accordance with, but not limited to, the specifications and provisions of Section 165 of the State Finance Law, (Use of Tropical Hardwoods) which prohibits purchase and use of tropical hardwoods, unless specifically exempted, by the State or any governmental agency or political subdivision or public benefit corporation. Qualification for an exemption under this law will be the responsibility of the contractor to establish to meet with the approval of the State.

In addition, when any portion of this contract involving the use of woods, whether supply or installation, is to be performed by

any subcontractor, the prime Contractor will indicate and certify in the submitted bid proposal that the subcontractor has been informed and is in compliance with specifications and provisions regarding use of tropical hardwoods as detailed in § 165 State Finance Law. Any such use must meet with the approval of the State; otherwise, the bid may not be considered responsive. Under bidder certifications, proof of qualification for exemption will be the responsibility of the Contractor to meet with the approval of the State.

**19. MACBRIDE FAIR EMPLOYMENT PRINCIPLES.** In accordance with the MacBride Fair Employment Principles (Chapter 807 of the Laws of 1992), the Contractor hereby stipulates that the Contractor either (a) has no business operations in Northern Ireland, or (b) shall take lawful steps in good faith to conduct any business operations in Northern Ireland in accordance with the MacBride Fair Employment Principles (as described in Section 165 of the New York State Finance Law), and shall permit independent monitoring of compliance with such principles.

**20. OMNIBUS PROCUREMENT ACT OF 1992.** It is the policy of New York State to maximize opportunities for the participation of New York State business enterprises, including minority- and women-owned business enterprises as bidders, subcontractors and suppliers on its procurement contracts.

Information on the availability of New York State subcontractors and suppliers is available from:

NYS Department of Economic Development  
Division for Small Business  
Albany, New York 12245  
Telephone: 518-292-5100  
Fax: 518-292-5884  
email: [opa@esd.ny.gov](mailto:opa@esd.ny.gov)

A directory of certified minority- and women-owned business enterprises is available from:

NYS Department of Economic Development  
Division of Minority and Women's Business Development  
633 Third Avenue  
New York, NY 10017  
212-803-2414  
email: [mwbecertification@esd.ny.gov](mailto:mwbecertification@esd.ny.gov)  
<https://ny.newnycontracts.com/FrontEnd/VendorSearchPublic.asp>

The Omnibus Procurement Act of 1992 (Chapter 844 of the Laws of 1992, codified in State Finance Law § 139-i and Public Authorities Law § 2879(3)(n)-(p)) requires that by signing this bid proposal or contract, as applicable, Contractors certify that whenever the total bid amount is greater than \$1 million:

(a) The Contractor has made reasonable efforts to encourage the participation of New York State Business Enterprises as suppliers and subcontractors, including certified minority- and

women-owned business enterprises, on this project, and has retained the documentation of these efforts to be provided upon request to the State;

(b) The Contractor has complied with the Federal Equal Opportunity Act of 1972 (P.L. 92-261), as amended;

(c) The Contractor agrees to make reasonable efforts to provide notification to New York State residents of employment opportunities on this project through listing any such positions with the Job Service Division of the New York State Department of Labor, or providing such notification in such manner as is consistent with existing collective bargaining contracts or agreements. The Contractor agrees to document these efforts and to provide said documentation to the State upon request; and

(d) The Contractor acknowledges notice that the State may seek to obtain offset credits from foreign countries as a result of this contract and agrees to cooperate with the State in these efforts.

**21. RECIPROCITY AND SANCTIONS PROVISIONS.**

Bidders are hereby notified that if their principal place of business is located in a country, nation, province, state or political subdivision that penalizes New York State vendors, and if the goods or services they offer will be substantially produced or performed outside New York State, the Omnibus Procurement Act 1994 and 2000 amendments (Chapter 684 and Chapter 383, respectively, codified in State Finance Law § 165(6) and Public Authorities Law § 2879(5)) require that they be denied contracts which they would otherwise obtain. NOTE: As of October 2019, the list of discriminatory jurisdictions subject to this provision includes the states of South Carolina, Alaska, West Virginia, Wyoming, Louisiana and Hawaii.

**22. COMPLIANCE WITH BREACH NOTIFICATION**

**AND DATA SECURITY LAWS.** Contractor shall comply with the provisions of the New York State Information Security Breach and Notification Act (General Business Law § 899-aa and State Technology Law § 208) and commencing March 21, 2020 shall also comply with General Business Law § 899-bb.

**23. COMPLIANCE WITH CONSULTANT DISCLOSURE LAW.**

If this is a contract for consulting services, defined for purposes of this requirement to include analysis, evaluation, research, training, data processing, computer programming, engineering, environmental, health, and mental health services, accounting, auditing, paralegal, legal or similar services, then, in accordance with Section 163 (4)(g) of the State Finance Law (as amended by Chapter 10 of the Laws of 2006), the Contractor shall timely, accurately and properly comply with the requirement to submit an annual employment report for the contract to the agency that awarded the contract, the Department of Civil Service and the State Comptroller.



**24. PROCUREMENT LOBBYING.** To the extent this agreement is a "procurement contract" as defined by State Finance Law §§ 139-j and 139-k, by signing this agreement the contractor certifies and affirms that all disclosures made in accordance with State Finance Law §§ 139-j and 139-k are complete, true and accurate. In the event such certification is found to be intentionally false or intentionally incomplete, the State may terminate the agreement by providing written notification to the Contractor in accordance with the terms of the agreement.

**25. CERTIFICATION OF REGISTRATION TO COLLECT SALES AND COMPENSATING USE TAX BY CERTAIN STATE CONTRACTORS, AFFILIATES AND SUBCONTRACTORS.**

To the extent this agreement is a contract as defined by Tax Law § 5-a, if the contractor fails to make the certification required by Tax Law § 5-a or if during the term of the contract, the Department of Taxation and Finance or the covered agency, as defined by Tax Law § 5-a, discovers that the certification, made under penalty of perjury, is false, then such failure to file or false certification shall be a material breach of this contract and this contract may be terminated, by providing written notification to the Contractor in accordance with the terms of the agreement, if the covered agency determines that such action is in the best interest of the State.

**26. IRAN DIVESTMENT ACT.** By entering into this Agreement, Contractor certifies in accordance with State Finance Law § 165-a that it is not on the "Entities Determined to be Non-Responsive Bidders/Offerers pursuant to the New York State Iran Divestment Act of 2012" ("Prohibited Entities List") posted at: <https://ogs.ny.gov/list-entities-determined-be-non-responsive-biddersofferers-pursuant-nys-iran-divestment-act-2012>

Contractor further certifies that it will not utilize on this Contract any subcontractor that is identified on the Prohibited Entities List. Contractor agrees that should it seek to renew or extend this Contract, it must provide the same certification at the time the Contract is renewed or extended. Contractor also agrees that any proposed Assignee of this Contract will be required to certify that it is not on the Prohibited Entities List before the contract assignment will be approved by the State.

During the term of the Contract, should the state agency receive information that a person (as defined in State Finance Law § 165-a) is in violation of the above-referenced certifications, the state agency will review such information and offer the person an opportunity to respond. If the person fails to demonstrate that it has ceased its engagement in the investment activity which is in violation of the Act within 90 days after the determination of such violation, then the state agency shall take such action as may be appropriate and provided for by law, rule, or contract, including, but not limited to, imposing sanctions, seeking compliance, recovering damages, or declaring the Contractor in default.

The state agency reserves the right to reject any bid, request for assignment, renewal or extension for an entity that appears on the Prohibited Entities List prior to the award, assignment, renewal or extension of a contract, and to pursue a responsibility review with respect to any entity that is awarded a contract and appears on the Prohibited Entities list after contract award.

**27. ADMISSIBILITY OF REPRODUCTION OF CONTRACT.**

Notwithstanding the best evidence rule or any other legal principle or rule of evidence to the contrary, the Contractor acknowledges and agrees that it waives any and all objections to the admissibility into evidence at any court proceeding or to the use at any examination before trial of an electronic reproduction of this contract, in the form approved by the State Comptroller, if such approval was required, regardless of whether the original of said contract is in existence.

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## **APPENDIX F**

### **Federal Funding Agency Mandatory Terms and Conditions**

The following provisions are required by federal funding agencies in order for expenditures by Authorized Users to be eligible for federal reimbursement in the event of a State declaration of disaster emergency pursuant to Section 28 of the Executive Law.

#### **1. REMEDIES**

Remedies for Contractor failure to observe or perform any term or condition shall be as provided in the OGS centralized contract (if applicable), including all appendices.

#### **2. TERMINATION FOR CAUSE AND CONVENIENCE**

Termination for cause and convenience will be in accordance with Termination, Appendix B, General Specifications, if a statewide centralized contract, and Section 5, Copeland Anti-Kickback Act, of this document and/or the rules and regulations of your governing authority.

#### **3. EQUAL EMPLOYMENT OPPORTUNITY**

During the performance of the contract, OGS centralized contract (if applicable) or any purchase by an Authorized User, the Contractor agrees as follows:

(1) The Contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, or national origin. The Contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, sexual orientation, gender identity, or national origin. Such action shall include, but not be limited to the following:

Employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.

(2) The Contractor will, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, sexual orientation, gender identity, or national origin.

(3) The Contractor will not discharge or in any other manner discriminate against any employee or applicant for employment because such employee or applicant has inquired about, discussed, or disclosed the compensation of the employee or applicant or another employee or applicant. This provision shall not apply to instances in which an employee who has access to the compensation information of other employees or applicants as a part of such employee's essential job functions discloses the compensation of such other employees or applicants to individuals who do not otherwise have access to such information, unless such disclosure is in response to a formal complaint or charge, in furtherance of an investigation, proceeding, hearing, or action, including an investigation conducted by the employer, or is consistent with the Contractor's legal duty to furnish information.

(4) The Contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said labor union or workers' representatives of the Contractor's commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

(5) The Contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.

(6) The Contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

(7) In the event of the Contractor's noncompliance with the nondiscrimination clauses of the OGS centralized contract or with any of the said rules, regulations, or orders, the OGS centralized contract may be canceled, terminated, or suspended in whole or in part, and the Contractor may be declared ineligible for further Government contracts or federally assisted construction contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

(8) The Contractor will include the portion of the sentence immediately preceding paragraph (1) and the provisions of paragraphs (1) through (8) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The Contractor will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance:

Provided, however, that in the event a Contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the administering agency, the Contractor may request the United States to enter into such litigation to protect the interests of the United States.

The Authorized User further agrees that it will be bound by the above equal opportunity clause with respect to its own employment practices when it participates in federally assisted construction work: Provided, that if the Authorized User so participating is a State or local government, the above equal opportunity clause is not applicable to any agency, instrumentality or subdivision of such government which does not participate in work on or under the contract.

The Authorized User agrees that it will assist and cooperate actively with the administering agency and the Secretary of Labor in obtaining the compliance of contractors and subcontractors with the equal opportunity clause and the rules, regulations, and relevant orders of the Secretary of Labor, that it will furnish the administering agency and the Secretary of Labor such information as they may require for the supervision of such

compliance, and that it will otherwise assist the administering agency in the discharge of the agency's primary responsibility for securing compliance.

The Authorized User further agrees that it will refrain from entering into any contract or contract modification subject to Executive Order 11246 of September 24, 1965, with a contractor debarred from, or who has not demonstrated eligibility for, Government contracts and federally assisted construction contracts pursuant to the Executive Order and will carry out such sanctions and penalties for violation of the equal opportunity clause as may be imposed upon Contractors and subcontractors by the administering agency or the Secretary of Labor pursuant to Part II, Subpart D of the Executive Order. In addition, the Authorized User agrees that if it fails or refuses to comply with these undertakings, the administering agency may take any or all of the following actions: Cancel, terminate, or suspend in whole or in part this grant (contract, loan, insurance, guarantee); refrain from extending any further assistance to the Authorized User under the program with respect to which the failure or refund occurred until satisfactory assurance of future compliance has been received from such Authorized User; and refer the case to the Department of Justice for appropriate legal proceedings.

**4. DAVIS-BACON ACT. (Applicable to all construction contracts in excess of (\$2000))**

- a. If applicable, all transactions regarding the OGS centralized contract or any purchase by an Authorized User shall be done in compliance with the Davis-Bacon Act (40 U.S.C. 3141- 3144, and 3146-3148) and the requirements of 29 C.F.R. pt. 5 as may be applicable. The Contractor shall comply with 40 U.S.C. 3141-3144, and 3146-3148 and the requirements of 29 C.F.R. pt. 5 as applicable.
- b. Contractors are required to pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor.
- c. Additionally, Contractors are required to pay wages not less than once a week.

**5. COPELAND ANTI-KICKBACK ACT. (Applicable to all construction contracts in excess of (\$2000))**

- a. Contractor. The Contractor shall comply with 18 U.S.C. § 874, 40 U.S.C. § 3145, and the requirements of 29 C.F.R. pt. 3 as may be applicable, which are incorporated by reference into the OGS centralized contract.
- b. Subcontracts. The Contractor or subcontractor shall insert in any subcontracts the clause above and such other clauses as Federal funding agency may by appropriate instructions require, and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all of these contract clauses.
- c. Breach. A breach of the clauses above may be grounds for termination of the OGS centralized contract, and for debarment as a Contractor and subcontractor as provided in 29 C.F.R. § 5.12.

**6. CONTRACT WORK HOURS AND SAFETY STANDARDS ACT. (Applicable to all contracts in excess of \$100,000 that involve employment of mechanics and laborers)**

- (1) Overtime requirements. No Contractor or subcontractor for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed

on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.

(2) Violation; liability for unpaid wages; liquidated damages. In the event of any violation of the clause set forth in paragraph (b)(1) of this section, the Contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such Contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (b)(1) of this section, in the sum of \$26 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (b)(1) of this section.

(3) Withholding for unpaid wages and liquidated damages. The Authorized User shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the Contractor or subcontractor under any such contract or any other Federal Agreement with the same prime contractor, or any other federally assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (b)(2) of this section.

(4) Subcontracts. The Contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraph (b)(1) through (4) of this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (b)(1) through (4) of this section.

## **7. RIGHTS TO INVENTIONS MADE UNDER A CONTRACT OR AGREEMENT**

All such rights shall be addressed in accordance with Ownership/Title to Project Deliverables, Appendix B, General Specifications.

## **8. CLEAN AIR ACT AND THE FEDERAL WATER POLLUTION CONTROL ACT. (Applicable to all contracts in excess of \$150,000)**

### ***Clean Air Act***

1. The Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. § 7401 et, seq.

2. The Contractor agrees to report each violation to the contract manager or the Office of General Services and the Authorized User if a statewide centralized contract and understands and agrees that the Office of General Services or the Authorized User will, in turn, report each violation as required to assure notification to the Federal funding agency, and the appropriate Environmental Protection Agency Regional Office.

3. The Contractor agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with Federal assistance provided by the Federal funding agency.

**Federal Water Pollution Control Act**

1. The Contractor agrees to comply with all applicable standards, orders, or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251 et seq.
2. The Contractor agrees to report each violation to the Office of General Services and Authorized User and understands and agrees that the Office of General Services or the Authorized User will, in turn, report each violation as required to assure notification to the Federal funding agency, and the appropriate Environmental Protection Agency Regional Office.
3. The Contractor agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with Federal assistance provided by the Federal funding agency.

**9. DEBARMENT AND SUSPENSION**

- (1) This contract is a covered transaction for purposes of 2 C.F.R. pt. 180 and 2 C.F.R. pt. 3000. As such, the Contractor is required to verify that none of the Contractor's principals (defined at 2 C.F.R. § 180.995) or its affiliates (defined at 2 C.F.R. § 180.905) are excluded (defined at 2 C.F.R. § 180.940) or disqualified (defined at 2 C.F.R. § 180.935).
- (2) The Contractor must comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C, and must include a requirement to comply with these regulations in any lower tier covered transaction it enters into.
- (3) This certification is a material representation of fact relied upon by the State or Authorized User. If it is later determined that the Contractor did not comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C, in addition to remedies available to the State or an Authorized User, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment.
- (4) The Contractor agrees to comply with the requirements of 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C while this offer is valid and throughout the period of any contract that may arise from this offer. The Contractor further agrees to include a provision requiring such compliance in its lower tier covered transactions.

**10. BYRD ANTI-LOBBYING AMENDMENT**

Byrd Anti-Lobbying Amendment, 31 U.S.C. § 1352 (as amended)

If the OGS centralized contract or any purchase by an Authorized User has a value of \$100,000 or more, Contractor shall file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, officer or employee of Congress, or an employee of a Member of Congress in connection with obtaining any Federal contract, grant, or any other award covered by 31 U.S.C. § 1352. Each tier shall also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the recipient who in turn will forward the certification(s) to the awarding agency.

- a. Required Certification. If applicable, Contractors must sign and submit to the State the following certification.

**APPENDIX A, 44 C.F.R. PART 18 – CERTIFICATION REGARDING LOBBYING****Certification for Contracts, Grants, Loans, and Cooperative Agreements**

The undersigned certifies, to the best of his or her knowledge and belief, that:

1. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
2. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
3. The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

The Contractor, \_\_\_\_\_, certifies or affirms the truthfulness and accuracy of each statement of its certification and disclosure, if any. In addition, the Contractor understands and agrees that the provisions of 31 U.S.C. Chap. 38, Administrative Remedies for False Claims and Statements, apply to this certification and disclosure, if any.

Signature of Contractor's Authorized Official   
Name and Title of Contractor's Authorized Official \_\_\_\_\_ Date: 2-25-2021

**11. PROCUREMENT OF RECOVERED MATERIALS**

(i) In the performance of this contract, the Contractor shall make maximum use of products containing recovered materials that are EPA-designated items unless the product cannot be acquired—

- Competitively within a timeframe providing for compliance with the contract performance schedule;
- Meeting contract performance requirements; or
- At a reasonable price.

(ii) Information about this requirement, along with the list of EPA-designated items, is available at EPA's Comprehensive Procurement Guidelines web site,

<https://www.epa.gov/smm/comprehensive-procurement-guideline-cpg-program>

(iii) The Contractor also agrees to comply with all other applicable requirements of Section 6002 of the Solid Waste Disposal Act.

**12. ACCESS TO RECORDS**

(1) The Contractor agrees to provide the Office of General Services or the Authorized User, the Federal funding agency, the Comptroller General of the United States, or any of their authorized representatives access to any books, documents, papers, and records of

the Contractor that are directly pertinent to this contract for the purposes of making audits, examinations, excerpts, and transcriptions.

(2) The Contractor agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.

(3) The Contractor agrees to provide the Federal funding agency or its authorized representatives access to construction or other work sites pertaining to the work being completed under the contract.

(4) The State and the Contractor acknowledge and agree that no language in this contract is intended to prohibit audits or internal reviews by the Federal funding agency or the Comptroller General of the United States.

### **13. CHANGES**

Amendments to this contract shall be in accordance with the terms of the OGS centralized contract.

### **14. FEDERAL SEAL(S), LOGOS, AND FLAGS**

The Contractor shall not use the seal(s), logos, crests, or reproductions of flags or likenesses of Federal agency officials without specific pre-approval.

### **15. COMPLIANCE WITH FEDERAL LAW, REGULATIONS, AND EXECUTIVE ORDERS**

This is an acknowledgement that Federal funding agency financial assistance may be used to fund all or a portion of the contract. The Contractor will comply with all applicable Federal law, regulations, executive orders, FEMA or other federal agency policies, procedures, and directives.

### **16. NO OBLIGATION BY FEDERAL GOVERNMENT**

The Federal Government is not a party to this Contract or any purchase by an Authorized User and is not subject to any obligations or liabilities to the State, Contractor, or any other party pertaining to any matter resulting from the Contract or any purchase by an Authorized User.

### **17. PROGRAM FRAUD AND FALSE OR FRAUDULENT STATEMENTS OR RELATED ACTS**

The Contractor acknowledges that 31 U.S.C. Chap. 38 (Administrative Remedies for False Claims and Statements) applies to the Contractor's actions pertaining to this Contract or any purchase by an Authorized User.

### **18. FEDERAL DEBT**

The Contractor certifies that it is non-delinquent in its repayment of any federal debt. Examples of relevant debt include delinquent payroll and other taxes, audit disallowance, and benefit overpayments.

### **19. CONFLICTS OF INTEREST**

The Contractor shall notify the Office of General Services and Authorized User as soon as possible if this Agreement or any aspect related to the anticipated work under this Agreement raises an actual or potential conflict of interest (as described in 2 C.F.R. Part 200). The Contractor shall explain the actual or potential conflict in writing in sufficient detail so that the Office of General Services and Authorized User is able to assess the actual or potential conflict. The Contractor shall provide any additional information



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necessary for the Office of General Services and Authorized User to fully assess and address the actual or potential conflict of interest.

**20. U.S. EXECUTIVE ORDER 13224**

Contractor, and its subcontractors, must comply with U.S. Executive Order 13224 and U.S. Laws that prohibit transactions with and provision of resources and support to individuals and organizations associated with terrorism.