

Request for Proposals (RFP) No. P23007
Attachment I – Sample Contract

INTRODUCTION

This contract between Minneapolis Public Housing Authority (MPHA) in and for the City of Minneapolis, a body corporate and politic and corporate, duly created, organized, and existing under the laws of the State of Minnesota and _____ (Contractor) is hereby entered into this **1st day of January, 2024**.

Services pursuant to this contract shall begin on **the 1st day of January, 2024, and shall end on the 31st day of December, 2026**, unless otherwise extended, modified, terminated or renewed by the parties as provided for in this contract. The term "herein" as used throughout this contract refers to this contract form, the appendices and all listed attachments. The term "RFP" as used throughout this contract refers to Request for Proposals No. P23007.

It is agreed that this contract and appendices are contractual in nature and voluntarily entered into by both parties as their free act and deed, acting in their individual judgment without reliance upon any statement or representation of the other party. This contract and appendices constitute the entire understanding, oral or written, between the parties, and supersede any and all prior discussions and/or agreement between the parties. The parties agree that any alteration to the contract appendices, attachments or addenda shall be null and void, unless made in writing by mutual agreement of the MPHA and the Contractor. The parties agree to execute whatever additional documents are deemed reasonably necessary to effectuate this transaction.

The purpose of this contract is to state and define the terms and conditions under which the Contractor shall provide full comprehensive maintenance and repair services for the vertical transportation systems identified, and the terms and conditions under which the MPHA shall compensate the Contractor for such services rendered.

It is the intent of this contract to ensure all requirements, procedures, tests, inspections, service practices, component repairs, equipment renewals, system adjustments, filing procedures and recording documentation as referenced, mandated or otherwise implied are all inclusive, and to guarantee the MPHA that the absence of a particular item of work, service or procedure shall not alleviate the Contractor of the sole responsibility to provide such labor, expertise, materials, equipment, services or other procedures applicable to the contract and practical requirements unless same is specifically excluded, prorated or deleted herein.

The contract is subject to periodic review and audit for compliance.

1.0 Services and Payment.

- 1.1 Scope of Services.** The services provided under this contract generally consist of those services as described herein, specifically in Contract Appendix No. 9, Scope of Services. MPHA shall retain the right to implement and/or enforce any item issued as part of the RFP.
- 1.2 Provisions of any and all Work (Work Orders).** The Contractor shall not begin any work without the receipt of a completed Work Order from the authorized MPHA representative. This Work Order may take the form of an e-mail.
- 1.3 Contract Value.** The current total Not-To-Exceed (NTE) value of this contract is:

\$ _____

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The Contractor exceeds the NTE amount at its own risk. The Contractor is under no obligation to provide additional goods and/or services that would cause the Contractor's fees to exceed the NTE amount without prior revision of this amount by written change order. Further, MPHA reserves the right to amend the NTE amount at any time during the ensuing contract period(s).

1.4 Renewal Options. This contract is initially executed for a period of 36 months with the option, at MPHA's discretion, to extend multiple times up to 24 additional months, for a maximum total of 60 months.

1.5 Billing Method.

1.5.1 All replacement parts, repairs, adjustments and associated services, as specified herein, shall be supplied, installed, performed and conducted at Contractor's sole cost and expense, including but not limited to travel time, parking and permit fees, unless otherwise specified herein.

1.5.2 MPHA agrees to pay Contractor on a monthly basis, for work performed and approved by MPHA, the fee of _____ (\$ ____/month) during the term of this contract, subject to price adjustments as specified herein.

- a. All work including standard maintenance, repair, or extraordinary work of any kind shall be invoiced using the current MPHA drop box system.
- b. A Monthly invoice shall be provided in within fifteen (15) days after the month ends and shall detail charges for standard maintenance in the following manner. Each property shall be individually listed on the invoice and identified by project number and address. The number of maintenance hours provided during the quarter to-date, the target maintenance hours for the quarter to-date, the variance between the actual and target maintenance hours for the quarter to-date, and the callback and repair hours for the quarter to-date shall be listed in columns to the right of the address. Columns shall also be provided for the base monthly maintenance fee per building and an adjusted fee that will include any refunds as a result of not providing the minimum maintenance hours required. The invoice shall be accompanied by Certified Payroll Affidavits for all work performed during the month.
- c. Extraordinary work and/or other work, as approved by MPHA in writing, shall be invoiced separately upon completion and acceptance of the work or other services performed as detailed below:
 - Contract Identification.
 - Date of Service.
 - Service Identification: Complete description of the service performed and/or materials provided, including the project number and building address where service was performed.

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- Work order originator: MPHA work order number; to be given to Contractor by the person requesting service and to be written on the invoice next to the invoice number.
 - Unit prices: The price shall be separated into labor, materials, quantities, rates and extended totals.
 - Total unit prices.
 - Permit fee: A copy of the approved permit and evidence of proper closure shall be submitted with the invoice.
 - Expenses: Itemized reimbursable expenses, including mileage and travel time.
 - Total charges: Summary of prices.
 - Copies of timesheets, material invoices and a certified payroll affidavit shall accompany invoice.
- d.** Any state or local tax charges, which may be applicable, are not included in the monthly fee indicated. Applicable taxes shall be itemized on the monthly billing invoice statement by material line item or labor charge as appropriate.
- 1.5.3** Payment for services rendered shall be made on a monthly basis, within thirty (30) days of submission of a contract compliant invoice, using the current MPHA drop box invoicing system. Any invoice received not properly completed will not be paid unless and/or until Contractor complies with the applicable provisions of this contract. In addition, MPHA shall pay any tax imposed upon Contractor by existing or future law, as due in conjunction with the services rendered or purchase of materials used to provide the services.
- a.** Payment for Emergency Call-back services shall be included in the fixed monthly lump sum price for services rendered twenty-four (24) hours per day, seven (7) days per week, without extra charge to MPHA.

1.6 Non-Payment.

- 1.6.1** MPHA may have Contractor's work and systems' performance operations checked by a Consultant to ensure Contractor is performing in accordance with this contract. Notwithstanding any other provision to the contrary, if the work requirements are not maintained, MPHA will retain the monthly payment to Contractor until the Consultant verifies that the work and/or operating performance is back to standard. If three (3) consecutive months of substandard maintenance is noted, MPHA has the right to immediately cancel the contract without notice to Contractor.
- 1.6.2** Notwithstanding any other provision to the contrary, MPHA's or MPHA's Representative may withhold approval for payment on any request to such extent as may be necessary to protect MPHA from loss on account of:

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- a. Negligence on Contractor's part to execute the work properly or failure to perform any provisions of the contract. MPHA, after three (3) days written notice to Contractor, may, without prejudice to any other remedy, make good such deficiencies and may deduct the cost there from this contract.
- b. Claims filed or reasonable evidence indicating probable filing of claims due to Contractor's failure to perform.
- c. Failure of Contractor to make payments properly to subcontractors for material and labor used to fulfill contractual requirements.
- d. Damage to the building as a result of work performed or another subcontractor's failure to perform.

2.0 Contractor's Obligations. The Contractor agrees to provide the specific services detailed herein and shall also be responsible for the following:

2.1 Workmanlike Standard. Contractor shall, without charge, replace or correct any work found by MPHA to (1) not conform to the contract requirements, or (2) not meet workmanlike standards as determined by MPHA, unless MPHA decides, in its sole discretion, it is in its interest to accept the work as is with an appropriate adjustment in contract price. The Contractor shall promptly segregate and remove any rejected materials from the premises.

If Contractor does not replace or correct rejected work within five (5) business days of being notified, MPHA may (1) replace or correct the work and charge the cost to the Contractor, or (2) terminate for default the Contractor's right to proceed with work.

2.2 Supervision and Oversight. The Contractor shall be solely responsible for providing supervision and oversight to all Contractor personnel assigned to MPHA properties under this contract.

2.3 Qualified Personnel. The Contractor warrants and represents that it will assign only qualified personnel to perform the services outlined herein. For the purposes of this contract, the term "qualified personnel" shall mean those personnel who have been appropriately screened, tested and trained in the manner described in this contract or as provided by the Contractor during the Contractor's normal conduct of business.

2.4 Insurance Requirements. The Contractor shall purchase and maintain insurance as required to protect the Contractor, MPHA, Elliotts LP, and MPHA's Elevator Consultant (Van Deusen & Associates, Inc.) from claims set forth in items 2.4.1 through 2.4.4 below that may arise out of, result from, or are in any manner connected with: (1) the execution of the work under this contract, or (2) occur or result from the use by Contractor, its agents or employees, of materials, equipment, instrumentalities or other property, whether the same be owned by MPHA, Elliotts LP, the Contractor, subcontractors or third parties. The insurance required hereunder shall be effective and apply whether such claims arise by the Contractor or by anyone directly or indirectly employed by Contractor or by anyone for whose acts the Contractor may be liable.

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The Contractor shall require its subcontractors, if any, to comply with all insurance requirements in this contract. The Contractor shall at all times be responsible for determining and ensuring that its subcontractors are insured as required by the contract. The premiums, costs, and charges for any such insurance shall be paid by each subcontractor at its own expense. The insurance required to be obtained under the contract shall be written for not less than the limits of liability specified below or required by law, whichever is greater. The types of claims, required coverages and minimum limits of liability are as follows:

2.4.1 Worker's Compensation Insurance/Employer's Liability. Claims under Contractor's Workers' Compensation disability benefit and other similar employee benefit acts; claims for damages because of bodily injury, occupational sickness or disease or death of employees. Insurance coverage shall include Statutory Workers' Compensation, including Employers Liability with a minimum limit of \$500,000 each accident, \$500,000 Disease-Policy Limit, \$500,000 Disease Each employee.

2.4.2 General Liability Insurance. Claims for damages because of bodily injury, occupational sickness or disease, or death, by any person other than employees; claims for personal injuries which are sustained by (1) any person as a result of an act or omission directly or indirectly related to the employment of such person by the Contractor, or (2) any other person; claims for damages because of injury to or destruction of tangible property including loss of use resulting therefrom. Insurance coverages shall include:

- Premises - Operations
- Blanket Contractual Liability, including contractual liability assumed by this contract
- Broad Form Property Damage
- Personal Injury, including death
- Operations of Independent Contractors
- Independent Contractors Protective Liability coverage

Policy Limits:

- Personal Injury - \$1,500,000
- Each Occurrence - \$1,500,000
- Separate Limits for bodily injury and property damage of \$1,000,000 per occurrence and \$2,000,000 in the aggregate.
- Excess liability limits of not less than \$4,000,000 per occurrence and in the aggregate. To follow form of the underlying policy.
- Completed Operations coverage with a minimum limit of \$1,000,000 per occurrence and \$2,000,000 in the aggregate.

The policy limits may be a combination of underlying and excess liability (follows form) policies. Commercial General Liability insurance required under this paragraph shall be written on an occurrence form.

2.4.3 Statutory State Disability Benefits Insurance. Covering all persons employed by Contractor in connection with this contract.

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2.4.4 Automobile Liability Insurance. Claims for damages because of bodily injury or death of any person, or any property damage, arising out of the ownership or use of any motor vehicle. Insurance coverage shall include Commercial Automobile Liability insurance including owned, hired and non-owned vehicles with limits of liability of \$1,000,000 Combined Single Limit for each occurrence for bodily injury and death, or property damage.

The foregoing insurance policies shall be primary to any other insurance which may be carried by Contractor and shall name MPHA, Elliots LP, and MPHA's Elevator Consultant, Van Deusen & Associates, Inc. as additional insureds with a specific policy endorsement as follows:

Minneapolis Public Housing Authority
Elliots LP
Van Deusen & Associates, Inc.

The limits of liability specified above shall be considered minimum requirements. Approval of the insurance by MPHA shall not relieve or decrease the liability of Contractor. MPHA does not in any way represent that the insurance or limits of insurance specified above are sufficient or adequate to protect Contractor's interests or liabilities but are minimums. Employer's Liability, Commercial General Liability and Automobile Liability insurance may be arranged under single policies for full minimum limits required, or by a combination of underlying policies with the balance provided by an Excess or Umbrella Liability policy, where Excess or Umbrella policy provides "form follows policy" coverage.

Contractor shall endorse its Automobile Liability, Commercial General Liability and Umbrella/Excess Liability policies to add Minneapolis Public Housing Authority, Elliots LP, and Van Deusen & Associates, Inc. as additional insureds with respect to liability arising out of (a) operations performed for MPHA by or for Contractor, (b) Contractor's completed work under this contract, (c) claims for bodily injury or death brought against any of the additional insureds by Contractor's employees, or the employees of its subcontractors of any tier, however caused, related to the performance of the work under this contract. Such insurance afforded to MPHA as additional insured under Contractor's policies shall be primary insurance and not excess over, or contributing with, any insurance purchased or maintained by MPHA or others required to be included as additional insureds. The additional insured status must be reflected on Contractor's Certificate of Insurance to MPHA.

MPHA will try to give Contractor notice within a reasonable time (within twenty-four (24) hours) of any known accidents, alteration or change affecting the equipment covered by this contract and of any change of ownership. It is understood and agreed that Contractor will immediately notify MPHA and Code Authority if required by Code when Contractor becomes aware of an accident, any equipment becomes unsafe or operating in a manner which might cause injury to anyone using said equipment and it is further understood and agreed that Contractor will immediately remove any equipment from service when the equipment becomes unsafe or operating in a manner which might cause injury to anyone using said equipment.

Contractor will further provide Certificates of Insurance with additional insured status per the above requirements on an annual basis, naming MPHA, Elliots LP, and Van Deusen & Associates, Inc. as additional insured per the above requirements. The policies shall contain a

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provision giving MPHA at least thirty (30) day prior written notice of any change or cancellation of such insurance. All insurance must be licensed by appropriate state jurisdictions and maintain a minimum Best's rating of "B" or better or shall be acceptable carriers subject to MPHA's discretion. Contractor agrees that the required insurance is not intended to limit the Contractor's liability in the event Contractor is deemed to be negligent in causing bodily injury or property damage during the course of its operation.

Certificates of Insurance and policy endorsements indicating additional insured status shall be filed with MPHA prior to commencing any work hereunder. MPHA shall not be obligated to review certificates or other evidence of insurance, or to advise Contractor of any deficiencies in such documents, and receipt thereof shall not relieve Contractor from, nor be deemed a waiver of MPHA's right to enforce, the terms of Contractor's obligations under this contract. All insurance policies shall contain a provision that coverages and limits afforded thereunder shall not be canceled without thirty (30) days prior written notice to MPHA. MPHA shall have the right to examine any policy or endorsements required under this contract.

All insurance policies required to be obtained by Contractor and its subcontractors hereunder shall include a waiver of subrogation by endorsement or otherwise in favor of MPHA and its agents, employees, officers, directors, and lenders. The waivers of subrogation shall be effective as to a person or entity even though that person or entity would otherwise have a duty of indemnification, contractual or otherwise, did not pay the insurance premium directly or indirectly, and whether or not the person or entity had an insurance interest.

Contractor will, at its own expense, maintain physical damage insurance in the amounts and against the perils desired by Contractor on all property owned or rented by Contractor. Contractor hereby waives its rights of recovery against the owner for any damage or loss to property of any kind which is owned or rented by Contractor or for which Contractor is liable.

Failure to maintain the above-referenced insurance coverage, including naming MPHA, Elliotts LP, and Van Deusen & Associates, Inc. as an additional insureds (where appropriate) during the term(s) of this contract shall constitute a material breach thereof. Insurance certificate(s) or endorsement(s) shall be delivered to the following person representing MPHA:

Minneapolis Public Housing Authority
Attention: Ayla LeRoy, Buyer
1001 Washington Ave N, Minneapolis, MN 55401

2.5 Licensing. Contractor shall also provide MPHA with a copy of any required licenses. Failure to maintain these licenses in a current status during the term(s) of this contract shall constitute a material breach thereof.

2.5 Financial Viability and Regulatory Compliance.

2.5.1 The Contractor warrants and represents that its corporate entity is in good standing with all applicable federal, state and local licensing authorities and that it possesses all requisite licenses to perform the services required by this contract. The Contractor further warrants and represents that it owes no outstanding delinquent federal, state or local taxes or business assessments.

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- 2.5.2** The Contractor agrees to promptly disclose to MPHA any IRS liens or licensure suspension or revocation that may adversely affect its capacity to perform the services outlined in this contract. The failure by the Contractor to disclose such issue to MPHA in writing within 5 days of such notification received will constitute a material breach of this contract.
- 2.5.3** The Contractor further agrees to promptly disclose to MPHA any change of more than 50% of its ownership and/or any declaration of bankruptcy that the Contractor may undergo during the term(s) of this contract. The failure of the Contractor to disclose any change of more than 50% of its ownership and/or its declaration of bankruptcy within 5 days of said actions shall constitute a material breach of this contract.
- 2.5.4** All disclosures made pursuant to this section of the contract shall be made in writing and submitted to MPHA within the time periods required herein.
- 2.6 State and Federal Data Privacy Statement.** The Contractor may have access to information or data that is classified as “private, confidential, not-public or non-public” under the Minnesota Government Data Practices Act and applicable Federal law. The Contractor shall maintain the confidential nature of any data or information received in the course of providing services and shall not otherwise breach the security of the data as defined by the Minnesota Government Data Practices Act. The unauthorized disclosure of “private, confidential, not-public or non-public” data is subject to civil and criminal penalties under the Minnesota Government Data Practices Act and applicable Federal law.
- 2.7 Kari Koskinen Law.** The Contractor shall comply with the Minnesota Kari Koskinen law and related laws regarding any Contractor employees that perform work in MPHA occupied units.
- 2.8 Record Keeping.** Contractor shall maintain comprehensive records of all services performed under this contract. These records will be available for inspection by MPHA at any time during regular business hours and upon 48 hours written notice.
- 2.9 Non-Contractual Corrective Action Notification to MPHA.** When, in the opinion of Contractor, corrective action is needed, but considered within the terms of this contract, to be the responsibility of MPHA rather than Contractor, a written report detailing the nature of such action shall be promptly delivered to MPHA for further action (promptly is defined as within 10 working days of becoming aware of the need for corrective action). If such corrective action is considered to be needed on an emergency basis, that is, necessary to maintain an elevator in service or correct a safety related problem notification of the nature of such corrective action shall be immediately provided by telephone, facsimile and e-mail to MPHA’s Representative.
- 2.10** Contractor shall make any and all repairs or replacements damaged by Contractor's improper repair, negligent or willful acts or omissions at its sole cost and expense, including overtime labor if requested by MPHA’s or MPHA’s Representative.
- 2.11 Protection of Work and Property.** Contractor shall continuously maintain adequate protection of all their work from damage and shall protect MPHA’s property from injury or loss arising out of this contract. Contractor shall make good any such damages, injury or loss, except such as may be directly caused by agents or employees of MPHA. Contractor shall provide all barricades required to protect open hoistways or shafts per OSHA regulations. Such protection shall include

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any necessary guards or other barricades for employee protections during and after the maintenance procedure.

2.12 Errors and Omissions. Contractor shall notify MPHA and Consultant in writing regarding any necessary services, coverages or items which may have been omitted from the Scope of Work and Technical Specifications and any irregularities, discrepancies or duplications that could affect the full comprehensive intent of the contract. Any duplication of work or coverage is specified as a means of demonstrating the contract requirements, but such duplication if any is not intended to expand coverage or increase requirements for such work or services and such duplication shall not increase costs or provide justification for extra or additional charge to MPHA.

2.13 Representations. Contractor represents that it will (1) perform elevator maintenance services under contract in accordance with acceptable industry professional and ethical standards, (2) not proceed with performance of various aspects of the Services, unless pre-authorized (“Pre-approved Services”) by MPHA or MPHA’s Designee at the property, (3) conduct any handling of MPHA’s Confidential Information in accordance with acceptable industry professional and ethical standards, (4) not represent to any third party that it has authority to sign, endorse or represent a contractual relationship with or in MPHA’s name, or enter into any agreement on behalf of MPHA in connection herewith (unless expressly pre-authorized in writing by MPHA), (5) safeguard the physical security of MPHA’s Confidential Information if it has access to or possession of such information, (6) ensure that only “Authorized Representatives” of this contract, will have access to any of MPHA’s Confidential Information while rendering the Services, and that it will not be copied, or disseminated to anyone other than the Authorized Representative, and (7) ensure that all of its employees, representatives, agents or assigns will not solicit any of MPHA’s employees for any purpose. The parties agree that any alteration to any of the Addenda or Exhibits hereto shall be null and void, unless made in writing by mutual consent of the parties. Contractor’s obligations set forth herein shall remain in full force and effect for the later of a period of one (1) year from the date of termination or expiration of this contract, or the date the Confidential Information is returned to whomever disclosed such information, after the date of termination or expiration of this contract.

3.0 Modification. This contract shall not be modified, revised, amended or extended except by written change order or addendum.

3.1 Changes in Scope.

3.1.1 MPHA may at any time, by written order, make changes within the general scope of this contract in the work and service to be performed. If any such cases cause an increase or decrease in Contractor’s cost of, or the time required for, the performance of this contract, an equitable adjustment shall be made, and the contract modified in writing accordingly. If MPHA and Contractor fail to agree upon the adjustment to be made, MPHA reserves the right to solicit bids from other vendors for the performance of the additional work.

3.1.2 When MPHA removes one or more elevators named in this contract from service in order to perform work on such elevators that is outside the scope of this contract, the monthly payments due Contractor and the minimum maintenance hours required to be provided by the Contractor will be reduced accordingly. Contractor shall be notified, in

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writing, by letter or contract change order, at least three (3) full working days in advance of the elevator(s) being removed from, or returned to, service. If the elevator(s) is to be removed from service for 30 consecutive calendar days or less, MPHA will negotiate an equitable adjustment with Contractor and make the necessary adjustments on the monthly invoice authorizing payment. If the elevator(s) is to be removed from service for more than 30 consecutive calendar days, MPHA will issue a modification to the contract and negotiate an equitable adjustment in the contract price.

The period for reducing payments will begin on the effective date specified in the notice and will continue through the day before the elevator(s) is returned to covered service.

3.2 Price Adjustments.

- 3.2.1 Labor Contracts and Overtime.** Contractor shall furnish to the MPHA Property Manager, in duplicate, a copy of their current labor contract and any subsequent labor contracts effective during the term of this contract regarding their elevator maintenance personnel, and Contractor further agrees to furnish any additional information concerning overtime charges to the MPHA Property Manager at any time upon request.
- 3.2.2** Contractor may be entitled to a review of their labor and material costs for the purpose of adjusting the maintenance fee thirty (30) days prior to the annual renewal date of this contract each year. Contractor must submit a written request for such to MPHA within the required timeframe.
- 3.2.3** Upon submission of proof, satisfactory to the MPHA Property Manager, that Contractor's actual labor and/or material costs for performance of service have changed, the monthly price for service coverage shall be adjusted in an amount equal to the established variance based on the following formula:
- 3.2.3.1** Eighty percent (80%) of the fee shall be used to represent the labor portion of the contract.
- 3.2.3.2** Twenty percent (20%) of the fee shall be used to represent the material portion of the contract.
- 3.2.4** The current labor portion of the contract shall be increased or decreased by the percentage of increase or decrease of the current straight-time hourly rate for a mechanic, compared with same rate used for the previous year's labor portion of this contract.
- 3.2.4.1** The initial base labor amount is \$_____. This represents the Maintenance Mechanic's hourly wage with associated fringe benefits.
- 3.2.5** The current materials portion of the contract shall be adjusted based on the established monthly difference in the "Wholesale Metals and Metal Products Index" as published by the United States Department of Labor, Bureau of Labor Statistics.
- 3.2.5.1** Using [Month, Year] as the base month, the material factor is _____.

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3.2.6 Price adjustments shall be allowed annually on the anniversary date of the first price adjustment and shall remain unchanged for the next twelve (12) months. The first price adjustment, excluding Occupancy credits, will occur on _____.

3.2.7 Notwithstanding anything to the contrary, the maximum annual increase shall not be more than four percent (4%) of the total contracted payment for the preceding contract year.

3.3 Cancellation.

3.3.1 MPHA shall have the right to cancel this contract upon at least thirty (30) days prior written notice to Contractor of its election to do so without penalty for the following:

3.3.2 Elective upgrading of apparatus awarded to another vendor.

3.3.3 Substandard services and/or poor maintenance practices as confirmed by the Consultant or another qualified professional.

3.3.4 Failure to comply with governing authority directives and/or citations.

3.3.5 Sale of or any substantial change in ownership of the Contractor.

3.3.6 In addition to the rights provided above, MPHA shall have the right to cancel this contract immediately, upon the occurrence of any of the following contingencies: bankruptcy of MPHA or Contractor, mortgage foreclosure, condemnation, destruction of or substantial casualty to the Building in which the subject equipment is located, or transfer or conveyance of Title to the premises in which the subject equipment is located or the premises in which the subject equipment is located is rendered unusable in the opinion of MPHA.

3.3.7 Under no circumstances, unless allowed by MPHA or MPHA's Representative, will there be any shutdown or breakdown that last longer than three (3) days for traction elevators and two (2) days for hydraulic elevators. This includes locating the problem, procurement of parts, installation of these parts and placing the elevator back into safe, uninterrupted service. Contractor must be so equipped to meet these conditions. If Contractor is not able to obtain parts, necessary technical and engineering advice, etc., Contractor will be considered in default, giving sufficient justification to MPHA to immediately cancel this contract and obtain these services from any Contractor MPHA may choose.

3.3.8 Cancellation of this contract prior to the expiration date shall entitle Contractor to payment for services rendered and approved up to and including the date of cancellation less damages; and, MPHA shall not be responsible for any expenses or subsequent costs that may be incurred by Contractor as a result of an early cancellation or standard contract agreement expiration. MPHA shall have the right to cancel contract upon at least 90 days written notice to Contractor of its election to do so with no penalty.

4.0 Severability. The invalidity of any provision of this contract, as determined by a court of competent jurisdiction and/or HUD, shall in no way affect the validity of any other provision.

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5.0 Applicable Laws.

- 5.1 Compliance with Federal and State Laws.** All work performed by the Contractor pursuant to this contract shall be done in accordance with all applicable Federal, State and local laws, regulations, codes and ordinances.
- 5.2 Jurisdiction of Law.** The laws of the State of Minnesota shall govern the validity, construction and effect of this contract, unless said laws are superseded by, or in conflict with applicable federal laws and/or federal regulations. This contract will be binding upon the parties, their heirs, beneficiaries, and devisees of the parties hereto. The parties agree that Hennepin County, Minnesota is the appropriate forum for any action relating to this contract. This contract may be signed in counterparts.

6.0 Notices and Reports.

- 6.1** All notices to be given under the contract shall be in writing and addressed to the party to be notified, postage prepaid, by registered or certified mail, return receipt requested, or by delivering the same in person to such party. All notices shall be deemed to have been given as of the date of delivery indicated on the return receipt or date of failure to deliver by reason of changed address of which no notice was given or refusal to accept delivery, or when personally delivered. Any party or person to whom notices are to be sent or given pursuant to this contract may, by notice to all such other parties or persons mentioned herein, change its address for the giving of notices, provided, however, that a notice of change of address shall be deemed effective only when received by the addressee. All notices and reports submitted to MPHA by Contractor shall be in writing and delivered to the attention of the following person representing MPHA:

Minneapolis Public Housing Authority
Attention: _____
1001 Washington Ave N, Minneapolis, MN 55401

or, if appropriate, e-mailed to: _____.

- 6.2** All notices and/or reports submitted to the Contractor by MPHA shall be in writing and delivered to the attention of the following person representing the Contractor:

or, if appropriate, e-mailed to: _____.

- 7.0 2 CFR § 200, Procurement Standards.** Pursuant to this CFR, as issued by the Office of the Secretary, HUD, MPHA and the Contractor each agree:

- 7.1 Remedies for Contractor Breach.** Regarding contract-related issues, it is the responsibility of both MPHA and the Contractor to communicate with each other in as clear and complete a manner as possible. If at any time during the term of this contract MPHA or the Contractor is not satisfied with any issue, it is the responsibility of that party to deliver to the other party

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communication, in writing, fully detailing the issue and corrective action. The other party shall, within 10 days, respond in writing to the other party (however, MPHA shall retain the right to, if conditions warrant, require the Contractor to respond in a shorter period of time).

- 7.1.1** If the Contractor is in material breach of the contract, MPHA may promptly invoke the termination clause detailed in Clause No. 3 of Contract Appendix No. 1, form HUD-5370-C (01/2014), General Conditions for Non-Construction Contracts, Section I—(With or without Maintenance Work), and terminate the contract for cause. Such termination must be delivered to the Contractor in writing and shall fully detail all pertinent issues regarding the cause of and justification for the termination.
- 7.1.2** Prior to termination, MPHA may choose to warn the Contractor, verbally or in writing, of any issue of non-compliant or unsatisfactory performance. Such written warning may include placing the Contractor on probation, thereby giving the Contractor a certain period of time to correct the deficiencies or potentially suffer termination. If the Contractor does not agree with such action, Contractor shall have 10 days to dispute or protest, in writing, such action; if they do not do so within the 10-day period, they shall have no recourse but to accept and agree with MPHA's position. The written protest must detail all pertinent information, including justification detailing MPHA's alleged incorrect action(s).
- 7.1.3** After termination, if the Contractor does not agree with MPHA's justification for termination, the Contractor shall have 10 days to dispute such in writing; if the Contractor does not do so within the 10-day period, they shall have no recourse but to accept and agree with MPHA's position. The written protest must detail all pertinent information, including justification detailing MPHA's alleged incorrect action(s).
- 7.2 Termination for Cause and Convenience.** As detailed in Clause No. 3 of Contract Appendix No. 1, form HUD-5370-C (01/2014), General Conditions for Non-Construction Contracts, Section I—(With or without Maintenance Work).
- 7.3 Executive Order 11246.** For all construction contracts awarded in excess of \$10,000, both parties hereby agree to comply with Executive Order 11245 of September 24, 1965, entitled “Equal Employment Opportunity,” as amended by Executive Order 11375 of October 13, 1967, and as supplemented in Department of Labor Regulations (41 CFR Chapter 60).
- 7.4 Copeland “Anti-Kickback” Act.** For all construction or repair contracts awarded, both parties shall comply with the Copeland “Anti-Kickback” Act (18 U.S.C. 874) as supplemented in Department of Labor Regulations (29 CFR Part 3).
- 7.5 Davis-Bacon Act.** For all construction contracts awarded in excess of \$2,000 when required by Federal Grant Program legislation, both parties shall comply with the Davis-Bacon Act (40 U.S.C. 276a to 276a-7) as supplemented in Department of Labor Regulations (29 CFR Part 5).
- 7.6 Sections 103 and 107 of the Contract Work Hours and Safety Standards Act.** For all construction contracts awarded in excess of \$2,000 and for other contracts which involve the employment of mechanics or laborers awarded in excess of \$2,500, both parties shall comply with the Sections 103 and 107 of the Contract Work Hours and Safety Act (40 U.S.C. 327-330) as supplemented in Department of Labor Regulations (29 CFR Part 5).

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- 7.7 Reporting.** Both parties shall comply with any reporting requirements that may be detailed herein.
- 7.8 Patent Rights.** Both parties hereby agree to comply with HUD Bulletin 909-23, which is the (a) Notice of Assistance Regarding Patent and Copyright Infringement.
- 7.9 Access to Records.** Both parties hereby guarantee access by the grantee, the subgrantee, the Federal grantor agency, the Comptroller General of the United States, or any of their duly authorized representatives to any books, documents, papers, and records of Contractor which are directly pertinent to that specific contract for the purpose of making audit, examination, excerpts, and transcriptions.
- 7.10 Record Retention.** Both parties hereby guarantee retention of all required records for six years after grantees or subgrantees make final payments and all other pending matters are closed.
- 7.11 Clean Air Act.** For all contracts in excess of \$100,000, both parties hereby agree to comply with all applicable standards, orders or requirements issued under section 306 of the Clean Air Act (42 U.S.C. 1857(h), Section 508 of the Clean Water Act (33 U.S.C. 1368), Executive Order 11738, and Environmental Protection Agency regulations (40 CFR Part 15).
- 7.12 Energy Policy and Conservation Act.** Both parties hereby agree to comply with all mandatory standards and policies relating to energy efficiency, which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act (Pub. L. 94-163, 89 Stat. 871).

8.1 Additional Considerations.

- 8.1 Suspension Procedures.** The following outlines how MPHA will handle violations of any term and condition contained herein or in any other correspondence related to this solicitation or any unsatisfactory performance of work conducted as a result of this solicitation.
- 8.1.1 Terms and Conditions.** Contractors are expected to comply with all terms and conditions outlined within. Failure to comply with any term or condition will constitute a material violation and subject the Contractor to immediate suspension.
- 8.1.2 Unsatisfactory Performance.** All work performed by the Contractor is expected to be done in the most expeditious and professional manner as specified in Appendix No. 9, Scope of Services, while also complying with the workmanlike standard clause contained at Section 2.1.
- 8.1.3 Notice of Violation.** If MPHA discovers a term and condition was violated or the performance and completion of work was not done in a professional manner, as deemed by MPHA, MPHA staff will complete a vendor performance report, which will be sent to the Contractor via MPHA's Contracting Officer. The Contractor shall respond within two business days with a solution fixing the problem, if applicable, or an action plan that will ensure future violations or unsatisfactory performance will not continue to occur. Failure to respond within the stated timeframe will constitute a major violation. The completed vendor performance report will be placed in the permanent vendor file.

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8.1.4 Suspension and Reinstatement. For minor violations, as deemed by MPHA's Contracting Officer, if three vendor performance reports within a rolling 12-month period are received the Contractor will be suspended from future contracting opportunities for a 6-month period. At the conclusion of the 6-month period the Contractor will need to submit a written statement to MPHA's Contracting Officer outlining the efforts that will be taken to prevent future violations in order to be reinstated.

For major violations, as deemed by MPHA's Contracting Officer, which may include but is not limited to failing to maintain proper insurance, subcontracting work without MPHA's authorization, failing to pay prevailing wages, or failing to correct unsatisfactorily completed work within the requested time, the Contractor will be immediately suspended for a 6-month period. At the conclusion of the 6-month period, the Contractor will need to submit a written statement to MPHA's Contracting Officer outlining the efforts that will be taken to prevent future violations in order to be reinstated.

After the Contractor has fulfilled the requirements of the suspension they will be reinstated and be included on future contracting opportunities.

8.2 Non-Escalation. Unless otherwise specified, the unit prices reflected in the contract shall remain firm with no provision for price increases during the term of the contract.

8.3 Funding Restrictions and Order Quantities. MPHA reserves the right to reduce or increase estimated or actual quantities in whatever amount necessary or terminate the contract without prejudice or liability to MPHA, if:

8.3.1 Funding is not available;

8.3.2 Legal restrictions are placed upon the expenditure of monies for this category of service or supplies; or

8.3.3 MPHA's requirements in good faith change after award of the contract.

8.4 Local, State, and/or Federal Permits. Unless otherwise stated, all local, State or Federal permits which may be required to provide the services ensuing from this award, whether or not they are known to either MPHA or the proposers at the time of the proposal submittal deadline or the award, shall be the sole responsibility of the Contractor and any costs that were submitted by the Contractor in response to the RFP shall reflect all costs required by the Contractor to procure and provide such necessary permits.

8.5 Government Standards. The Contractor shall ensure that all items and services proposed conform to all local, State and Federal law concerning safety (OSHA and NOSHA) and environmental control (EPA and Bureau County Pollution Regulations) and any other enacted ordinance, code, law or regulation. The Contractor shall be responsible for all costs incurred for compliance with any such possible ordinance, code, law or regulation. No time extensions shall be granted or financial consideration given to the Contractor for time or monies lost due to violations of any such ordinance, code, law or regulations that may occur.

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- 8.6 Official, Agent and Employees of MPHA Not Personally Liable.** In no event shall any official, officer, employee, or agent of MPHA in any way be personally liable or responsible for any covenant or agreement herein contained, whether either expressed or implied, nor for any statement, representation or warranty made herein or in any connection with this agreement.
- 8.7 Subcontractors.** Unless otherwise stated, the Contractor may not use any subcontractors to accomplish any portion of the services described in the RFP documents or the contract without MPHA's prior written permission.
- 8.8 Prompt Payment to Subcontractors.** Pursuant to Minn. Stat. § 471.425, subd. 4a, the Contractor, as prime contractor, shall pay any subcontractor within ten (10) days of Contractor's receipt of payment from MPHA for undisputed services provided by the subcontractor. The Contractor is required to pay interest at 1.5% per month or any part of a month to any subcontractor on any undisputed amount not paid on time to the subcontractor.
- For an unpaid balance of less than \$100.00, Contractor shall pay the actual penalty due to the subcontractor. The minimum monthly interest penalty payment for an unpaid balance of \$100.00 or more is \$10.00. If subcontractor prevails in a civil action to collect interest penalties from the Contractor, the Contractor shall pay the subcontractor's reasonable costs and disbursements, including attorney's fees.
- 8.9 Salaries and Expenses Relating to Contractor's Employees.** Unless otherwise stated, the Contractor shall pay all salaries and expenses of, and all Federal, Social Security taxes, Federal and State Unemployment taxes, and any similar taxes relating to its employees used in the performance of the contract. The Contractor further agrees to comply with all Federal, State and local wage and hour laws and all licensing laws applicable to its employees or other personnel furnished under this agreement.
- 8.10 Independent Contractor.** Unless otherwise stated, the Contractor is an independent contractor. Nothing herein shall create any association, agency, partnership or joint venture between the parties and neither shall have any authority to bind the other in any way.
- 8.11 Waiver of Breach.** A waiver of either party of any terms or condition of this agreement shall not be deemed or construed as a waiver of such term or condition for the future, or of any subsequent breach thereof. All remedies, rights, undertakings, obligations, and agreements contained in this agreement shall be cumulative and none of them shall be in limitation of any other remedy, right, obligation or agreement of either party.
- 8.12 Time of the Essence.** Time is of the essence as to each contract provision in which time of performance is a factor.
- 8.13 Limitation of Liability.** In no event shall MPHA be liable to the Contractor for any indirect, incidental, consequential or exemplary damages.
- 8.14 Indemnification.** To the fullest extent permitted by law, the Contractor shall defend, indemnify and hold harmless MPHA and MPHA's consultants, agents and employees of any of them from and against claims, damages, losses and expenses, including but not limited to attorneys' fees, arising out of or resulting from, or in any manner connected with, the performance under this

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contract, provided that such claim, damage, loss or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property, but only to the extent caused by the negligent acts or omissions of the Contractor, a subcontractor, anyone directly or indirectly employed by them or anyone for whose acts they may be liable, regardless of whether or not such claim, damage, loss or expense is caused in part by a party indemnified hereunder. This indemnification, hold harmless and defense obligation shall survive acceptance of the work under this contract, completion of the work under this contract, or termination, with or without cause, of the contract. The Contractor further agrees to obtain, maintain and pay for such Commercial General Liability insurance coverage and endorsements as will insure the provisions of this paragraph.

- 8.15 Lobbying Certification.** By execution of this contract with MPHA, the Contractor certifies, to the best of its knowledge and belief that it has complied with HUD Form 50071, which has been included in this contract as Contract Appendix No. 7.
- 8.16 Additional Federally Required Orders/Directives.** Both parties shall comply with the following laws and directives, where applicable:
- 8.16.1 Executive Order 11063**, as amended, which directs the Secretary of HUD to take all action which is necessary and appropriate to prevent discrimination by agencies that utilize federal funds.
 - 8.16.2 Public Law 88-352, Title VI of the Civil Rights Act of 1964**, which provides that no person in the United States shall, on the basis of race, color, national origin or sex, be excluded from participation in, denied the benefits of, or subjected to discrimination under any program or activity which receives federal financial assistance. MPHA hereby extends this requirement to the Contractor and its private contractors. Specific prohibited discriminatory actions and corrective action are described in Chapter 2, Subtitle C, Title V of the Anti-Drug Abuse Act of 1988 (42 U.S.C. 19901 et. seq.).
 - 8.16.3 Public Law 90-284, Title VIII of the Civil Rights Act of 1968.**, popularly known as the Fair Housing Act, which provides for fair housing throughout the United States and prohibits any person from discriminating in the sale or rental of housing, the financing of housing or the provision of brokerage services, including in any way making unavailable or denying a dwelling to any person because of race, color, religion, sex or national origin. Pursuant to this statute, MPHA requires that Contractor administer all programs and activities, which are related to housing and community development in such a manner as affirmatively to further fair housing.
 - 8.16.4 The Age Discrimination Act of 1975**, which prohibits discrimination on the basis of age.
 - 8.16.5 Anti-Drug Abuse Act of 1988** (42 U.S.C. 11901 et. seq.).
 - 8.16.6 HUD Information Bulletin 909-23** which is the following:
 - 8.16.6.1** Notice of Assistance Regarding Patent and Copyright Infringement;

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8.16.6.2 Clean Air and Water Certification; and

8.16.6.3 Energy Policy and Conservation Act.

8.16.7 That the funds that are provided by MPHA and HUD hereunder shall not be used, directly or indirectly, to employ, award a contract to, or otherwise engage the services of any debarred, suspended or ineligible contractor.

8.16.8 That none of the personnel who are employed in the administration of the work required by this contract shall, in any way or to any extent, be engaged in the conduct of political activities in violation of Title V, Chapter 15, of the United States Code.

8.16.9 The mention herein of any statute or Executive Order is not intended as an indication that such statute or Executive Order is necessarily applicable nor is the failure to mention any statute or Executive Order intended as an indication that such statute or Executive Order is not applicable. Each provision of law and each clause, which is required by law to be inserted in this contract, shall be deemed to have been inserted herein, and this contract shall be read and enforced as though such provision or clause had been physically inserted herein. If, through mistake or otherwise, any such provision is not inserted or is inserted incorrectly, this contract shall forthwith be physically amended to make such insertion or correction upon the application of either part.

9.0 Section 3 Clause. As detailed in 24 CFR 75.17, *Section 3 clause*, the following clauses are included as part of this contract.

9.1 Section 3 of the Housing and Urban Development Act of 1968 - ("Section 3") as described in Part 75 - Economic Opportunities for Low- And Very Low-Income Persons - provides that economic opportunities, most importantly employment, generated by certain U.S. Department of Housing and Urban Development ("HUD") financial assistance must be directed to low- and very low-income persons, particularly those who are either recipients of government assistance for housing or residents of the community in which the Federal assistance is spent.

9.2 The procurement that is the subject of this solicitation ("project") will be funded using federal Public Housing Financial Assistance and is subject to Section 3 regulations. As such, this solicitation and the resulting contract award will be required to comply with Section 3 regulations and MPHA's Section 3 Policy.

9.3 As outlined in Appendix 5 – Section 3 Compliance Report, submit quarterly this compliance report. This report requires the Contractor to provide on a quarterly basis the total number of hours worked on MPHA projects for all workers, the number of hours worked on MPHA projects by Section 3 workers, the number of hours worked on MPHA projects by Targeted Section 3 workers and any qualitative efforts undertaken to help achieve compliance with the benchmark requirements. The benchmark requirements are 25% of the total labor hours worked on MPHA projects must be worked by Section 3 workers and 5% must be worked by Targeted Section 3 workers. Failure to submit this report will constitute a material breach of this contract which may result in termination for cause and/or withholding of payments until reports are completed and submitted in a satisfactory manner, as deemed by MPHA.

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10.0 Appendices.

10.1 The following documents are part of this contract:

- 10.1.1 Contract Appendix No. 1.** form HUD-5370-C (01/2014), General Conditions for Non-Construction Contracts, Section I—(With or without Maintenance Work);
- 10.1.2 Contract Appendix No. 2.** form HUD-5370-C (1/2014), General Conditions for Non-Construction Contracts Section II (With Maintenance Work);
- 10.1.3 Contract Appendix No. 3.** Form HUD 52158 (04/2005), Maintenance Wage Rate Determination;
- 10.1.4 Contract Appendix No. 4.** Affidavit of Compliance with HUD Determined Wage Rules;
- 10.1.5 Contract Appendix No. 5.** Section 3 Compliance Report;
- 10.1.6 Contract Appendix No. 6.** Section 3 Worker Certification Form;
- 10.1.7 Contract Appendix No. 7.** HUD Form 50071, Certification of Payments to Influence Federal Transactions;
- 10.1.8 Contract Appendix No. 8.** State and Federal Data Privacy Statement;
- 10.1.9 Contract Appendix No. 9.** Scope of Services;
- 10.1.10 Contract Appendix No. 10.** Proposed Fees.
- 10.1.11 Inclusion by Reference.** Included by reference is any document or clause issued as part of the RFP that MPHA may choose to include at any time during the performance of this contract or any options exercised thereto by MPHA. Further, any document that may be referenced herein that has not been listed above is hereby incorporated herein by reference, and a copy of each such document is available from MPHA upon written request for such from the Contractor.

10.2 Order of Precedence. In the case of any discrepancy between this contract and any of the above noted appendices, the requirement(s) detailed in the body of this contract shall take first precedence, then the requirement(s) detailed in each appendix. The Contractor shall notify MPHA if they discover a discrepancy in the contract documents.

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11.0 Certifications. The undersigned representative of each party hereby acknowledges by signature below that they have authority to enter into the contract for their respective entity, have reviewed the foregoing, and understand and agree to abide by their respective obligations as defined herein:

[Contractor]:

By: _____ **Date:** _____
[Name], [Title]

Minneapolis Public Housing Authority:

By: _____ **Date:** _____
Jake Gateman, Contracting Officer

By: _____ **Date:** _____
Lisa R. Griebel, General Counsel
(As to Form and Execution)

General Conditions for Non-Construction Contracts

Section I – (With or without Maintenance Work)

U.S. Department of Housing and Urban Development

Office of Public and Indian Housing

Office of Labor Relations

OMB Approval No. 2577-0157 (exp. 11/30/2023)

Public Reporting Burden for this collection of information is estimated to average one hour per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. HUD may not conduct or sponsor, and an applicant is not required to respond to a collection of information unless it displays a currently valid OMB control number.

Applicability. This form HUD-5370-C has 2 Sections. These Sections must be inserted into non-construction contracts as described below:

- 1) **Non-construction contracts** (*without* maintenance) **greater than \$150,000 - use Section I;**
- 2) **Maintenance contracts** (including nonroutine maintenance as defined at 24 CFR 905.100) **greater than \$2,000 but not more than \$150,000 - use Section II;** and
- 3) **Maintenance contracts** (including nonroutine maintenance), **greater than \$150,000 – use Sections I and II.**

Section I - Clauses for All Non-Construction Contracts greater than \$150,000

1. Definitions

The following definitions are applicable to this contract:

- (a) "Authority or Housing Authority (HA)" means the Housing Authority.
- (b) "Contract" means the contract entered into between the Authority and the Contractor. It includes the contract form, the Certifications and Representations, these contract clauses, and the scope of work. It includes all formal changes to any of those documents by addendum, Change Order, or other modification.
- (c) "Contractor" means the person or other entity entering into the contract with the Authority to perform all of the work required under the contract.
- (d) "Day" means calendar days, unless otherwise stated.
- (e) "HUD" means the Secretary of Housing and Urban development, his delegates, successors, and assigns, and the officers and employees of the United States Department of Housing and Urban Development acting for and on behalf of the Secretary.

2. Changes

- (a) The HA may at any time, by written order, and without notice to the sureties, if any, make changes within the general scope of this contract in the services to be performed or supplies to be delivered.
- (b) If any such change causes an increase or decrease in the hourly rate, the not-to-exceed amount of the contract, or the time required for performance of any part of the work under this contract, whether or not changed by the order, or otherwise affects the conditions of this contract, the HA shall make an equitable adjustment in the not-to-exceed amount, the hourly rate, the delivery schedule, or other affected terms, and shall modify the contract accordingly.
- (c) The Contractor must assert its right to an equitable adjustment under this clause within 30 days from the date of receipt of the written order. However, if the HA decides that the facts justify it, the HA may receive and act upon a

- proposal submitted before final payment of the contract.
- (d) Failure to agree to any adjustment shall be a dispute under clause Disputes, herein. However, nothing in this clause shall excuse the Contractor from proceeding with the contract as changed.
 - (e) No services for which an additional cost or fee will be charged by the Contractor shall be furnished without the prior written consent of the HA.

3. Termination for Convenience and Default

- (a) The HA may terminate this contract in whole, or from time to time in part, for the HA's convenience or the failure of the Contractor to fulfill the contract obligations (default). The HA shall terminate by delivering to the Contractor a written Notice of Termination specifying the nature, extent, and effective date of the termination. Upon receipt of the notice, the Contractor shall: (i) immediately discontinue all services affected (unless the notice directs otherwise); and (ii) deliver to the HA all information, reports, papers, and other materials accumulated or generated in performing this contract, whether completed or in process.
- (b) If the termination is for the convenience of the HA, the HA shall be liable only for payment for services rendered before the effective date of the termination.
- (c) If the termination is due to the failure of the Contractor to fulfill its obligations under the contract (default), the HA may (i) require the Contractor to deliver to it, in the manner and to the extent directed by the HA, any work as described in subparagraph (a)(ii) above, and compensation be determined in accordance with the Changes clause, paragraph 2, above; (ii) take over the work and prosecute the same to completion by contract or otherwise, and the Contractor shall be liable for any additional cost incurred by the HA; (iii) withhold any payments to the Contractor, for the purpose of off-set or partial payment, as the case may be, of amounts owed to the HA by the Contractor.
- (d) If, after termination for failure to fulfill contract obligations (default), it is determined that the Contractor had not failed, the termination shall be deemed to have been effected for the convenience of the HA, and the Contractor shall be entitled to payment as described in paragraph (b) above.
- (e) Any disputes with regard to this clause are expressly made subject to the terms of clause titled Disputes herein.

4. Examination and Retention of Contractor's Records

- (a) The HA, HUD, or Comptroller General of the United States, or any of their duly authorized representatives shall, until 3 years after final payment under this contract, have access to and the right to examine any of the Contractor's directly pertinent books, documents, papers, or other records involving transactions related to this contract for the purpose of making audit, examination, excerpts, and transcriptions.

- (b) The Contractor agrees to include in first-tier subcontracts under this contract a clause substantially the same as paragraph (a) above. "Subcontract," as used in this clause, excludes purchase orders not exceeding \$10,000.
- (c) The periods of access and examination in paragraphs (a) and (b) above for records relating to:
 - (i) appeals under the clause titled Disputes;
 - (ii) litigation or settlement of claims arising from the performance of this contract; or,
 - (iii) costs and expenses of this contract to which the HA, HUD, or Comptroller General or any of their duly authorized representatives has taken exception shall continue until disposition of such appeals, litigation, claims, or exceptions.

5. Rights in Data (Ownership and Proprietary Interest)

The HA shall have exclusive ownership of, all proprietary interest in, and the right to full and exclusive possession of all information, materials and documents discovered or produced by Contractor pursuant to the terms of this Contract, including but not limited to reports, memoranda or letters concerning the research and reporting tasks of this Contract.

6. Energy Efficiency

The contractor shall comply with all mandatory standards and policies relating to energy efficiency which are contained in the energy conservation plan issued in compliance with the Energy Policy and Conservation Act (Pub.L. 94-163) for the State in which the work under this contract is performed.

7. Disputes

- (a) All disputes arising under or relating to this contract, except for disputes arising under clauses contained in Section III, Labor Standards Provisions, including any claims for damages for the alleged breach there of which are not disposed of by agreement, shall be resolved under this clause.
- (b) All claims by the Contractor shall be made in writing and submitted to the HA. A claim by the HA against the Contractor shall be subject to a written decision by the HA.
- (c) The HA shall, with reasonable promptness, but in no event in no more than 60 days, render a decision concerning any claim hereunder. Unless the Contractor, within 30 days after receipt of the HA's decision, shall notify the HA in writing that it takes exception to such decision, the decision shall be final and conclusive.
- (d) Provided the Contractor has (i) given the notice within the time stated in paragraph (c) above, and (ii) excepted its claim relating to such decision from the final release, and (iii) brought suit against the HA not later than one year after receipt of final payment, or if final payment has not been made, not later than one year after the Contractor has had a reasonable time to respond to a written request by the HA that it submit a final voucher and release, whichever is earlier, then the HA's decision shall not be final or conclusive, but the dispute shall be determined on the merits by a court of competent jurisdiction.
- (e) The Contractor shall proceed diligently with performance of this contract, pending final resolution of any request for relief, claim, appeal, or action arising under the contract, and comply with any decision of the HA.

8. Contract Termination; Debarment

A breach of these Contract clauses may be grounds for termination of the Contract and for debarment or denial of participation in HUD programs as a Contractor and a subcontractor as provided in 24 CFR Part 24.

9. Assignment of Contract

The Contractor shall not assign or transfer any interest in this contract; except that claims for monies due or to become due from the HA under the contract may be assigned to a bank, trust company, or other financial institution. If the Contractor is a partnership, this contract shall inure to the benefit of the surviving or remaining member(s) of such partnership approved by the HA.

10. Certificate and Release

Prior to final payment under this contract, or prior to settlement upon termination of this contract, and as a condition precedent thereto, the Contractor shall execute and deliver to the HA a certificate and release, in a form acceptable to the HA, of all claims against the HA by the Contractor under and by virtue of this contract, other than such claims, if any, as may be specifically excepted by the Contractor in stated amounts set forth therein.

11. Organizational Conflicts of Interest

- (a) The Contractor warrants that to the best of its knowledge and belief and except as otherwise disclosed, it does not have any organizational conflict of interest which is defined as a situation in which the nature of work under this contract and a contractor's organizational, financial, contractual or other interests are such that:
 - (i) Award of the contract may result in an unfair competitive advantage; or
 - (ii) The Contractor's objectivity in performing the contract work may be impaired.
- (b) The Contractor agrees that if after award it discovers an organizational conflict of interest with respect to this contract or any task/delivery order under the contract, he or she shall make an immediate and full disclosure in writing to the Contracting Officer which shall include a description of the action which the Contractor has taken or intends to take to eliminate or neutralize the conflict. The HA may, however, terminate the contract or task/delivery order for the convenience of the HA if it would be in the best interest of the HA.
- (c) In the event the Contractor was aware of an organizational conflict of interest before the award of this contract and intentionally did not disclose the conflict to the Contracting Officer, the HA may terminate the contract for default.
- (d) The terms of this clause shall be included in all subcontracts and consulting agreements wherein the work to be performed is similar to the service provided by the prime Contractor. The Contractor shall include in such subcontracts and consulting agreements any necessary provisions to eliminate or neutralize conflicts of interest.

12. Inspection and Acceptance

- (a) The HA has the right to review, require correction, if necessary, and accept the work products produced by the Contractor. Such review(s) shall be carried out within 30 days so as to not impede the work of the Contractor. Any

product of work shall be deemed accepted as submitted if the HA does not issue written comments and/or required corrections within 30 days from the date of receipt of such product from the Contractor.

- (b) The Contractor shall make any required corrections promptly at no additional charge and return a revised copy of the product to the HA within 7 days of notification or a later date if extended by the HA.
- (c) Failure by the Contractor to proceed with reasonable promptness to make necessary corrections shall be a default. If the Contractor's submission of corrected work remains unacceptable, the HA may terminate this contract (or the task order involved) or reduce the contract price or cost to reflect the reduced value of services received.

13. Interest of Members of Congress

No member of or delegate to the Congress of the United States of America or Resident Commissioner shall be admitted to any share or part of this contract or to any benefit to arise there from, but this provision shall not be construed to extend to this contract if made with a corporation for its general benefit.

14. Interest of Members, Officers, or Employees and Former Members, Officers, or Employees

No member, officer, or employee of the HA, no member of the governing body of the locality in which the project is situated, no member of the governing body in which the HA was activated, and no other public official of such locality or localities who exercises any functions or responsibilities with respect to the project, shall, during his or her tenure, or for one year thereafter, have any interest, direct or indirect, in this contract or the proceeds thereof.

15. Limitation on Payments to Influence Certain Federal Transactions

(a) Definitions. As used in this clause:

"Agency", as defined in 5 U.S.C. 552(f), includes Federal executive departments and agencies as well as independent regulatory commissions and Government corporations, as defined in 31 U.S.C. 9101(1).

"Covered Federal Action" means any of the following Federal actions:

- (i) The awarding of any Federal contract;
- (ii) The making of any Federal grant;
- (iii) The making of any Federal loan;
- (iv) The entering into of any cooperative agreement; and,
- (v) The extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

Covered Federal action does not include receiving from an agency a commitment providing for the United States to insure or guarantee a loan.

"Indian tribe" and "tribal organization" have the meaning provided in section 4 of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450B). Alaskan Natives are included under the definitions of Indian tribes in that Act.

"Influencing or attempting to influence" means making, with the intent to influence, any communication to or appearance before 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 any covered Federal action.

"Local government" means a unit of government in a State and, if chartered, established, or otherwise recognized by a State for the performance of a governmental duty, including a local public authority, a special district, an intrastate district, a council of governments, a sponsor group representative organization, and any other instrumentality of a local government.

"Officer or employee of an agency" includes the following individuals who are employed by an agency:

- (i) An individual who is appointed to a position in the Government under title 5, U.S.C., including a position under a temporary appointment;
- (ii) A member of the uniformed services as defined in section 202, title 18, U.S.C.;
- (iii) A special Government employee as defined in section 202, title 18, U.S.C.; and,
- (iv) An individual who is a member of a Federal advisory committee, as defined by the Federal Advisory Committee Act, title 5, appendix 2.

"Person" means an individual, corporation, company, association, authority, firm, partnership, society, State, and local government, regardless of whether such entity is operated for profit or not for profit. This term excludes an Indian tribe, tribal organization, or other Indian organization with respect to expenditures specifically permitted by other Federal law.

"Recipient" includes all contractors, subcontractors at any tier, and subgrantees at any tier of the recipient of funds received in connection with a Federal contract, grant, loan, or cooperative agreement. The term excludes an Indian tribe, tribal organization, or any other Indian organization with respect to expenditures specifically permitted by other Federal law.

"Regularly employed means, with respect to an officer or employee of a person requesting or receiving a Federal contract, grant, loan, or cooperative agreement, an officer or employee who is employed by such person for at least 130 working days within one year immediately preceding the date of the submission that initiates agency consideration of such person for receipt of such contract, grant, loan, or cooperative agreement. An officer or employee who is employed by such person for less than 130 working days within one year immediately preceding the date of submission that initiates agency consideration of such person shall be considered to be regularly employed as soon as he or she is employed by such person for 130 working days.

"State" means a State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, a territory or possession of the United States, an agency or instrumentality of a State, and a multi-State, regional, or interstate entity having governmental duties and powers.

(b) Prohibition.

- (i) Section 1352 of title 31, U.S.C. provides in part that no appropriated funds may be expended by the recipient of a Federal contract, grant, loan, or cooperative agreement to pay 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 any of the following covered Federal actions: 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.

- (ii) The prohibition does not apply as follows:

(1) Agency and legislative liaison by Own Employees.

(a) The prohibition on the use of appropriated funds, in paragraph (i) of this section, does not apply in the case of a payment of reasonable compensation made to an officer or employee of a person requesting or receiving a Federal contract, grant, loan, or cooperative agreement, if the payment is for agency and legislative activities not directly related to a covered Federal action.

(b) For purposes of paragraph (b)(i)(1)(a) of this clause, providing any information specifically requested by an agency or Congress is permitted at any time.

(c) The following agency and legislative liaison activities are permitted at any time only where they are not related to a specific solicitation for any covered Federal action:

(1) Discussing with an agency (including individual demonstrations) the qualities and characteristics of the person's products or services, conditions or terms of sale, and service capabilities; and,

(2) Technical discussions and other activities regarding the application or adaptation of the person's products or services for an agency's use.

(d) The following agency and legislative liaison activities are permitted where they are prior to formal solicitation of any covered Federal action:

(1) Providing any information not specifically requested but necessary for an agency to make an informed decision about initiation of a covered Federal action;

(2) Technical discussions regarding the preparation of an unsolicited proposal prior to its official submission; and

(3) Capability presentations by persons seeking awards from an agency pursuant to the provisions of the Small Business Act, as amended by Public Law 95-507 and other subsequent amendments.

(e) Only those activities expressly authorized by subdivision (b)(ii)(1)(a) of this clause are permitted under this clause.

(2) Professional and technical services.

(a) The prohibition on the use of appropriated funds, in subparagraph (b)(i) of this clause, does not apply in the case of-

(i) A payment of reasonable compensation made to an officer or employee of a person requesting or receiving a covered Federal action or an extension, continuation, renewal, amendment, or modification of a covered Federal action, if payment is for professional or technical services rendered directly in the preparation, submission, or negotiation of any bid, proposal, or application for that Federal action or for meeting requirements imposed by or pursuant to law as a condition for receiving that Federal action.

(ii) Any reasonable payment to a person, other than an officer or employee of a

person requesting or receiving a covered Federal action or an extension, continuation, renewal, amendment, or modification of a covered Federal action if the payment is for professional or technical services rendered directly in the preparation, submission, or negotiation of any bid, proposal, or application for that Federal action or for meeting requirements imposed by or pursuant to law as a condition for receiving that Federal action. Persons other than officers or employees of a person requesting or receiving a covered Federal action include consultants and trade associations.

(b) For purposes of subdivision (b)(ii)(2)(a) of clause, "professional and technical services" shall be limited to advice and analysis directly applying any professional or technical discipline.

(c) Requirements imposed by or pursuant to law as a condition for receiving a covered Federal award include those required by law or regulation, or reasonably expected to be required by law or regulation, and any other requirements in the actual award documents.

(d) Only those services expressly authorized by subdivisions (b)(ii)(2)(a)(i) and (ii) of this section are permitted under this clause.

(iii) Selling activities by independent sales representatives.

(c) The prohibition on the use of appropriated funds, in subparagraph (b)(i) of this clause, does not apply to the following selling activities before an agency by independent sales representatives, provided such activities are prior to formal solicitation by an agency and are specifically limited to the merits of the matter:

(i) Discussing with an agency (including individual demonstration) the qualities and characteristics of the person's products or services, conditions or terms of sale, and service capabilities; and

(ii) Technical discussions and other activities regarding the application or adaptation of the person's products or services for an agency's use.

(d) Agreement. In accepting any contract, grant, cooperative agreement, or loan resulting from this solicitation, the person submitting the offer agrees not to make any payment prohibited by this clause.

(e) Penalties. Any person who makes an expenditure prohibited under paragraph (b) of this clause shall be subject to civil penalties as provided for by 31 U.S.C. 1352. An imposition of a civil penalty does not prevent the Government from seeking any other remedy that may be applicable.

(f) Cost Allowability. Nothing in this clause is to be interpreted to make allowable or reasonable any costs which would be unallowable or unreasonable in accordance with Part 31 of the Federal Acquisition Regulation (FAR), or OMB Circulars dealing with cost allowability for recipients of assistance agreements. Conversely, costs made specifically unallowable by the requirements in this clause will not be made allowable under any of the provisions of FAR Part 31 or the relevant OMB Circulars.

16. Equal Employment Opportunity

During the performance of this contract, the

Contractor/Seller agrees as follows:

(a) The [contractor/seller] will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, disability, or national origin. The

[contractor/seller] 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, disability, 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/seller] agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the contracting officer setting forth the provisions of this nondiscrimination clause.

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

(c) The [contractor/seller] 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/seller]'s legal duty to furnish information.

(d) The [contractor/seller] will send to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding, a notice to be provided by the agency contracting officer, advising the labor union or workers' representative of the [contractor/seller]'s commitments under section 202 of Executive Order 11246 of September 24, 1965, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

(e) The [contractor/seller] 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.

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

(g) In the event of the [contractor/seller]'s non-compliance with the nondiscrimination clauses of this contract or with any of such rules, regulations, or orders, this contract may be canceled, terminated or suspended in whole or in part and the [contractor/seller] may be declared ineligible for further Government 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.

(g) In the event of the [contractor/seller]'s non-compliance with the nondiscrimination clauses of this contract or with any of such rules, regulations, or orders, this contract may be canceled, terminated or suspended in whole or in part and the [contractor/seller] may be declared ineligible for further Government 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.

(h) The [contractor/seller] will include the provisions of paragraphs (a) through (h) 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 sub[contractor/seller] or vendor. The [contractor/seller] will take such action with respect to any subcontract or purchase order as may be directed by the Secretary of Labor as a means of enforcing such provisions including sanctions for noncompliance: Provided, however, that in the event the [contractor/seller] becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction, the [contractor/seller] may request the United States to enter into such litigation to protect the interests of the United States.

17. Equal Opportunity for Workers with Disabilities

1. The [contractor/seller] will not discriminate against any employee or applicant for employment because of physical or mental disability in regard to any position for which the employee or applicant for employment is qualified. The [contractor/seller] agrees to take affirmative action to employ and advance in employment individuals with disabilities, and to treat qualified individuals without discrimination on the basis of their physical or mental disability in all employment practices, including the following:

- i. Recruitment, advertising, and job application procedures;
- ii. Hiring, upgrading, promotion, award of tenure, demotion, transfer, layoff, termination, right of return from layoff and rehiring;
- iii. Rates of pay or any other form of compensation and changes in compensation;
- iv. Job assignments, job classifications, organizational structures, position descriptions, lines of progression, and seniority lists;
- v. Leaves of absence, sick leave, or any other leave;
- vi. Fringe benefits available by virtue of employment, whether or not administered by the [contractor/seller];
- vii. Selection and financial support for training, including apprenticeship, professional meetings, conferences, and other related activities, and selection for leaves of absence to pursue training;
- viii. Activities sponsored by the [contractor/seller] including social or recreational programs; and
- ix. Any other term, condition, or privilege of employment.

2. The [contractor/seller] agrees to comply with the rules, regulations, and relevant orders of the Secretary of Labor issued pursuant to the act.

3. In the event of the [contractor/seller] noncompliance with the requirements of this clause, actions for noncompliance may be taken in accordance with the rules, regulations, and relevant orders of the Secretary of Labor issued pursuant to the act.

4. The [contractor/seller] agrees to post in conspicuous places, available to employees and applicants for employment, notices in a form to be prescribed by the Director, Office of Federal Contract Compliance Programs, provided by or through the contracting officer. Such notices shall state the rights of applicants and employees as well as the [contractor/seller]'s obligation under the law to take affirmative action to employ and advance in employment qualified employees and applicants with disabilities.

The [contractor/seller] must ensure that applicants or employees with disabilities are provided the notice in a form that is accessible and understandable to the individual applicant or employee (e.g., providing Braille or large print versions of the notice, or posting a copy of the notice at a lower height for easy viewing by a person using a wheelchair). With respect to employees who do not work at a physical location of the [contractor/seller], a [contractor/seller] will satisfy its posting obligations by posting such notices in an electronic format, provided that the [contractor/seller] provides computers, or access to computers, that can access the electronic posting to such employees, or the [contractor/seller] has actual knowledge that such employees otherwise are able to access the electronically posted notices. Electronic notices for employees must be posted in a conspicuous location and format on the company's intranet or sent by electronic mail to employees. An electronic posting must be used by the [contractor/seller] to notify job applicants of their rights if the [contractor/seller] utilizes an electronic application process. Such electronic applicant notice must be conspicuously stored with, or as part of, the electronic application.

5. The [contractor/seller] will notify each labor organization or representative of workers with which it has a collective bargaining agreement or other contract understanding, that the [contractor/seller] is bound by the terms of section 503 of the Rehabilitation Act of 1973, as amended, and is committed to take affirmative action to employ and advance in employment, and shall not discriminate against, individuals with physical or mental disabilities.

6. The [contractor/seller] will include the provisions of this clause in every subcontract or purchase order in excess of \$ 10,000, unless exempted by the rules, regulations, or orders of the Secretary issued pursuant to section 503 of the act, as amended, 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 Director, Office of Federal Contract Compliance Programs may direct to enforce such provisions, including action for noncompliance.

7. The [contractor/seller] must, in all solicitations or advertisements for employees placed by or on behalf of the [contractor/seller], state that all qualified applicants will receive consideration for employment and will not be discriminated against on the basis of disability.

18. Dissemination or Disclosure of Information

No information or material shall be disseminated or disclosed to the general public, the news media, or any person or organization without prior express written approval by the HA.

19. Contractor's Status

It is understood that the Contractor is an independent contractor and is not to be considered an employee of the HA, or assume any right, privilege or duties of an employee, and shall save harmless the HA and its employees from claims suits, actions and costs of every description resulting from the Contractor's activities on behalf of the HA in connection with this Agreement.

20. Other Contractors

HA may undertake or award other contracts for additional work at or near the site(s) of the work under this contract. The contractor shall fully cooperate with the other contractors and with HA and HUD employees and shall carefully adapt scheduling and performing the work under this contract to accommodate the additional work, heeding any direction that may be provided by the Contracting Officer. The contractor shall not commit or permit any act that will interfere with the performance of work by any other contractor or HA employee.

21. Liens

The Contractor is prohibited from placing a lien on HA's property. This prohibition shall apply to all subcontractors.

22. Training and Employment Opportunities for Residents in the Project Area (Section 3, HUD Act of 1968; 24 CFR 135)

- (a) The work to be performed under this contract is subject to the requirements of section 3 of the Housing and Urban Development Act of 1968, as amended, 12 U.S.C. 1701u (section 3). The purpose of section 3 is to ensure that employment and other economic opportunities generated by HUD assistance or HUD-assisted projects covered by section 3, shall, to the greatest extent feasible, be directed to low- and very low-income persons, particularly persons who are recipients of HUD assistance for housing.
- (b) The parties to this contract agree to comply with HUD's regulations in 24 CFR Part 135, which implement section 3. As evidenced by their execution of this contract, the parties to this contract certify that they are under no contractual or other impediment that would prevent them from complying with the Part 135 regulations.
- (c) The contractor agrees to send to each labor organization or representative of workers with which the contractor has a collective bargaining agreement or other understanding, if any, a notice advising the labor organization or workers' representative of the contractor's commitments under this section 3 clause, and will post copies of the notice in conspicuous places at the work site where both employees and applicants for training and employment positions can see the notice. The notice shall describe the section 3 preference, shall set forth minimum number and job titles subject to hire, availability of apprenticeship and training positions, the qualifications for each; and the name and location of the person(s) taking applications for each of the positions; and the anticipated date the work shall begin.
- (d) The contractor agrees to include this section 3 clause in every subcontract subject to compliance with regulations in 24 CFR Part 135, and agrees to take appropriate action, as provided in an applicable provision of the subcontract or in this section 3 clause, upon a finding that the subcontractor is in violation of the regulations in 24 CFR Part 135. The contractor will not subcontract with any subcontractor where the contractor has notice or knowledge that the subcontractor has been found in violation of the regulations in 24 CFR Part 135.
- (e) Noncompliance with HUD's regulations in 24 CFR Part 135 may result in sanctions, termination of this contract for default, and debarment or suspension from future HUD assisted contracts
- (f) Noncompliance with HUD's regulations in 24 CFR Part 135 may result in sanctions, termination of this contract for default, and debarment or suspension from future HUD assisted contracts.

22. Procurement of Recovered Materials

- (a) In accordance with Section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act, the Contractor shall procure items designated in guidelines of the Environmental Protection Agency (EPA) at 40 CFR Part 247 that contain the highest percentage of

recovered materials practicable consistent with maintaining a satisfactory level of competition. The Contractor shall procure items designated in the EPA guidelines that contain the highest percentage of recovered materials practicable unless the Contractor determines that such items: (1) are not reasonably available in a reasonable period of time; (2) fail to meet reasonable performance standards, which shall be determined on the basis of the guidelines of the National Institute of Standards and Technology, if applicable to the item; or (3) are only available at an unreasonable price.

- (b) Paragraph (a) of this clause shall apply to items purchased under this contract where: (1) the Contractor purchases in excess of \$10,000 of the item under this contract; or (2) during the preceding Federal fiscal year, the Contractor: (i) purchased any amount of the items for use under a contract that was funded with Federal appropriations and was with a Federal agency or a State agency or agency of a political subdivision of a State; and (ii) purchased a total of in excess of \$10,000 of the item both under and outside that contract

General Conditions for Non-Construction Contracts

Section II – (With Maintenance Work)

U.S. Department of Housing and Urban Development

Office of Public and Indian Housing

Office of Labor Relations

OMB Approval No. 2577-0157 (exp. 11/30/2023)

Public Reporting Burden for this collection of information is estimated to average one hour per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. HUD may not conduct or sponsor, and an applicant is not required to respond to a collection of information unless it displays a currently valid OMB control number.

Applicability. This form HUD-5370C has 2 Sections. These Sections must be inserted into non-construction contracts as described below:

- 1) Non-construction contracts (*without* maintenance) greater than \$150,000 - use Section I;
- 2) Maintenance contracts (including nonroutine maintenance as defined at 24 CFR 905.200) greater than \$2,000 but not more than \$150,000 - use Section II; and
- 3) Maintenance contracts (including nonroutine maintenance), greater than \$150,000 – use Sections I and II.

Section II – Labor Standard Provisions for all Maintenance Contracts greater than \$2,000

1. Minimum Wages

- (a) All maintenance laborers and mechanics employed under this Contract in the operation of the project(s) shall be paid unconditionally and not less often than semi-monthly, and without subsequent deduction (except as otherwise provided by law or regulations), the full amount of wages due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Housing and Urban Development which is attached hereto and made a part hereof. Such laborers and mechanics shall be paid the appropriate wage rate on the wage determination for the classification of work actually performed, without regard to skill. Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein; provided, that the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination, including any additional classifications and wage rates approved by HUD under subparagraph 1(b), shall be posted at all times by the Contractor and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers.
- (b) (i) Any class of laborers or mechanics which is not listed in the wage determination and which is to be employed under the Contract shall be classified in conformance with the wage determination. HUD shall approve an additional classification and wage rate only when the following criteria have been met:
 - (1) The work to be performed by the classification required is not performed by a classification in the wage determination;
 - (2) The classification is utilized in the area by the industry; and
 - (3) The proposed wage rate bears a reasonable relationship to the wage rates contained in the wage determination.
- (ii) The wage rate determined pursuant to this paragraph shall be paid to all workers performing work

in the classification under this Contract from the first day on which work is performed in the classification.

2. Withholding of funds

The Contracting Officer, upon his/her own action or upon request of HUD, shall withhold or cause to be withheld from the Contractor under this Contract or any other contract subject to HUD-determined wage rates, with the same prime Contractor, so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics employed by the Contractor or any subcontractor the full amount of wages required by this clause. In the event of failure to pay any laborer or mechanic employed under this Contract all or part of the wages required under this Contract, the Contracting Officer or HUD may, after written notice to the Contractor, take such action as may be necessary to cause the suspension of any further payment or advance until such violations have ceased. The Public Housing Agency or HUD may, after written notice to the Contractor, disburse such amounts withheld for and on account of the Contractor or subcontractor to the respective employees to whom they are due.

3. Records

- (a) The Contractor and each subcontractor shall make and maintain for three (3) years from the completion of the work records containing the following for each laborer and mechanic:
 - (i) Name, address and Social Security Number;
 - (ii) Correct work classification or classifications;
 - (iii) Hourly rate or rates of monetary wages paid;
 - (iv) Rate or rates of any fringe benefits provided;
 - (v) Number of daily and weekly hours worked;
 - (vi) Gross wages earned;
 - (vii) Any deductions made; and
 - (viii) Actual wages paid.
- (b) The Contractor and each subcontractor shall make the records required under paragraph 3(a) available for inspection, copying, or transcription by authorized representatives of HUD or the HA and shall permit such representatives to interview employees during working hours on the job. If the Contractor or any subcontractor fails to make the required records available, HUD or its designee may, after written notice to the Contractor, take such action as may be necessary to cause the suspension of any further payment, advance or guarantee of funds.

4. Apprentices and Trainees

- (a) Apprentices and trainees will be permitted to work at less than the predetermined rate for the work they perform when they are employed pursuant to and individually registered in:
 - (i) A bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration (ETA), Office of

Apprenticeship Training, Employer and Labor Services (OATELS), or with a state apprenticeship agency recognized by OATELS, or if a person is employed in his/her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by OATELS or a state apprenticeship agency (where appropriate) to be eligible for probationary employment as an apprentice; A

- (ii) A trainee program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, ETA; or
- (iii) A training/trainee program that has received prior approval by HUD.

- (b) Each apprentice or trainee must be paid at not less than the rate specified in the registered or approved program for the apprentice's/trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Apprentices and trainees shall be paid fringe benefits in accordance with the provisions of the registered or approved program. If the program does not specify fringe benefits, apprentices/trainees must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification.
- (c) The allowable ratio of apprentices or trainees to journeyman on the job site in any craft classification shall not be greater than the ratio permitted to the employer as to the entire work force under the approved program.
- (d) Any worker employed at an apprentice or trainee wage rate who is not registered in an approved program, and any apprentice or trainee performing work on the job site in excess of the ratio permitted under the approved program, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed.
- (e) In the event OATELS, a state apprenticeship agency recognized by OATELS or ETA, or HUD, withdraws approval of an apprenticeship or trainee program, the employer will no longer be permitted to utilize apprentices/trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

5. Disputes concerning labor standards

- (a) Disputes arising out of the labor standards provisions contained in Section II of this form HUD-5370-C, other than those in Paragraph 6, shall be subject to the following procedures. Disputes within the meaning of this paragraph include disputes between the Contractor (or any of its subcontractors) and the HA, or HUD, or the employees or their representatives, concerning payment of prevailing wage rates or proper classification. The procedures in this section may be initiated upon HUD's own motion, upon referral of the HA, or upon request of the Contractor or subcontractor(s).
 - (i) A Contractor and/or subcontractor or other interested party desiring reconsideration of findings of violation by the HA or HUD relating to the payment of straight-time prevailing wages or classification of work shall request such reconsideration by letter postmarked within 30 calendar days of the date of notice of findings issued by the HA or HUD. The request shall set

forth those findings that are in dispute and the reasons, including any affirmative defenses, with respect to the violations. The request shall be directed to the appropriate HA or HUD official in accordance with instructions contained in the notice of findings or, if the notice does not specify to whom a request should be made, to the Regional Labor Relations Officer (HUD). The HA or HUD official shall, within 60 days (unless otherwise indicated in the notice of findings) after receipt of a timely request for reconsideration, issue a written decision on the findings of violation. The written decision on reconsideration shall contain instructions that any appeal of the decision shall be addressed to the Regional Labor Relations Officer by letter postmarked within 30 calendar days after the date of the decision. In the event that the Regional Labor Relations Officer was the deciding official on reconsideration, the appeal shall be directed to the Director, Office of Labor Relations (HUD). Any appeal must set forth the aspects of the decision that are in dispute and the reasons, including any affirmative defenses, with respect to the violations. The Regional Labor Relations Officer shall, within 60 days (unless otherwise indicated in the decision on reconsideration) after receipt of a timely appeal, issue a written decision on the findings. A decision of the Regional Labor Relations Officer may be appealed to the Director, Office of Labor Relations, by letter postmarked within 30 days of the Regional Labor Relations Officer's decision. Any appeal to the Director must set forth the aspects of the prior decision(s) that are in dispute and the reasons. The decision of the Director, Office of Labor Relations, shall be final.

- (b) Disputes arising out of the labor standards provisions of paragraph 6 shall not be subject to paragraph 5(a) of this form HUD-5370C. Such disputes shall be resolved in accordance with the procedures of the U.S. Department of Labor set forth in 29 CFR Parts 5, 6 and 7. Disputes within the meaning of this paragraph 5(b) include disputes between the Contractor (or any of its subcontractors) and the HA, HUD, the U.S. Department of Labor, or the employees or their representatives.

6. Contract Work Hours and Safety Standards Act

The provisions of this paragraph 6 are applicable only where the amount of the prime contract exceeds \$100,000. As used in this paragraph, the terms "laborers" and "mechanics" includes watchmen and guards.

- (a) **Overtime requirements.** No Contractor or subcontractor contracting 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 40 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 40 hours in such workweek.
- (b) **Violation; liability for unpaid wages; liquidated damages.** In the event of any violation of the provisions set forth in paragraph 6(a), 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 the 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 provisions set forth in paragraph (a) of this clause, in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of 40 hours without payment of the overtime wages required by provisions set forth in paragraph (a) of this clause.

- (c) **Withholding for unpaid wages and liquidated damages.** HUD or its designee shall upon its own action or upon written request of an authorized representative of the U.S. 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 federal contract 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 provisions set forth in paragraph (b) of this clause.

7. Subcontracts

The Contractor or subcontractor shall insert in any subcontracts all the provisions contained in this Section II and also a clause requiring the subcontractors to include these provisions in any lower tier subcontracts. The prime Contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all the provisions contained in these clauses.

8. Non-Federal Prevailing Wage Rates

Any prevailing wage rate (including basic hourly rate and any fringe benefits), determined under state law to be prevailing, with respect to any employee in any trade or position employed under the Contract, is inapplicable to the contract and shall not be enforced against the Contractor or any subcontractor, with respect to employees engaged under the contract whenever such non-Federal prevailing wage rate, exclusive of any fringe benefits, exceeds the applicable wage rate determined by the Secretary of HUD to be prevailing in the locality with respect to such trade or position.

Maintenance Wage Rate Decision	U.S. Department of Housing and Urban Development Office of Labor Relations	HUD FORM 52158 (06/2006)
Agency Name: Minneapolis PHA 1001 Washington Ave Minneapolis MN 55401	LR 2000 Agency ID No: MN002A	Wage Decision Type: <input checked="" type="checkbox"/> Routine Maintenance <input type="checkbox"/> Nonroutine Maintenance
	Effective Date: January 1, 2022	Expiration Date: December 31, 2023
<p>The following wage rate determination is made pursuant to Section 12(a) of the U.S. Housing Act of 1937, as amended, (public housing agencies), or pursuant to Section 104(b) of the Native American Housing Assistance and Self-determination Act of 1996, as amended, (Indian housing agencies). The agency and its contractors may pay to maintenance laborers and mechanics no less than the wage rate(s) indicated for the type of work they actually perform.</p> <p>Loretta Szweduk /s/, CIRS 11-30-21 HUD Labor Relations Date (Name, Title, Signature)</p>		
WORK CLASSIFICATION(S)	HOURLY WAGE RATES	
	BASIC WAGE	FRINGE BENEFIT(S) (if any)
Operating Maintenance Engineer Building & Grounds Specialist Service & Maintenance Specialist Maintenance Team Leader Preventative Maintenance Technician Journeyman Carpenter Electrician Foreman Journeyman Electrician Carpenter Foreman Journeyman Painter Temporary Help Agency Building & Grounds Specialist Wiring Systems Technician Wiring Systems Installer Carpenter, General Foreman	\$32.20 \$18.52 \$24.54 \$42.48 \$24.18 \$38.68 \$54.67 \$51.33 \$40.98 \$37.70 \$24.03 \$40.17 \$28.14 \$42.98	As defined by the PHA \$12.88 As defined by the PHA \$7.41 As defined by the PHA \$9.82 As defined by the PHA \$17.00 As defined by the PHA \$9.67 As defined by the PHA \$9.74 As defined by the PHA \$31.18 As defined by the PHA \$29.27 As defined by the PHA \$10.31 As defined by the PHA \$6.15 As defined by the PHA N/A As defined by the PHA \$17.63 As defined by the PHA \$14.71 As defined by the PHA \$10.82
		<input type="checkbox"/> The agency employee benefit program has been determined by HUD to be acceptable for meeting the prevailing fringe benefit requirements. <small>(HUD Labor Relations: If applicable, check box and initial below.)</small> _____ LR Staff Initial
		FOR HUD USE ONLY LR2000: Log in: Log out:

NOTICE TO CONTRACTORS

From: MPHA Procurement Coordinator

Subject: HUD – Determined Wage Rates
Routine and Non-Routine Maintenance
HUD Labor Relations Letter No. LR 2004-01

Effective immediately, HUD has eliminated the requirement of payroll certification and week wage payments as it pertains to Routine and Non-Routine Wage Decisions (please note that this does not pertain to Davis-Bacon construction projects). However, you are still required to create and maintain records that demonstrate your compliance with HUD – determined prevailing wage payment. That is, you must create and maintain, for three (3) years after completion of the work, records (pertaining to each laborer and mechanic employed on each job) containing information demonstrating your compliance with HUD – determined wage rates applicable to the work; those records must include at least the following:

1. Name, address, and Social Security Number
2. Correct work classifications(s)
3. Hourly Rate(s) paid
4. Rate(s) of any fringe benefits paid
5. Number of daily and weekly hours worked (a pay period may not exceed semi-monthly in duration)
6. Gross Wages earned
7. Any applicable and lawful deductions made
8. Actual wages paid

You are required to make these records available for inspection or transcription by authorized representatives of the MPHA or HUD. In addition, you must permit authorized representatives of HUD and MPHA to interview your employees during normal working hours. Further, if you choose to not submit certified payrolls, you will be required to provide to the MPHA Procurement Coordinator, prior to beginning work on the contract, a written affidavit declaring that all employees involved with the contract will be paid according to the Wage Determination document applicable to the contract.

With regard to payroll periods, you are no longer required to pay employees on a weekly basis; however, a pay period may not be of longer duration that semi-monthly.

Should you have questions in this regard, please call (612-342-1404) or write to MPHA Procurement Coordinator at 1001 Washington Avenue North Minneapolis, MN 55401



SECTION 3 COMPLIANCE REPORT FORM (Public Housing Financial Assistance Programs)

REPORT DATE: _____

VENDOR NAME	PROJECT DESCRIPTION	MPHA CONTRACT NUMBER
Point of Contact / Title	Telephone	E-mail
Work /Project Start Date	Work/Project End Date	Notes

This form should be completed by all vendors, contractors and service providers who have worked with the Minneapolis Public Housing Authority that is subject to Section 3 requirements per 24 CFR Part 75 and/or MPHA's Section 3 Policy and Compliance Plan. **Complete this form in its entirety, and attach the following supporting documentation: Section 3 Worker and Targeted Section 3 Worker Certification forms, payroll information supporting labor hour benchmark data, certification that you followed order of hiring priority, evidence of qualitative efforts made to comply with Section 3 and other supporting documents as applicable.**

You may attach a letter to this report if needed to further state your efforts, achievements or obstacles encountered.

Submit this form at completion of your work or by the 10th of each quarter (April, July, October, January) for work completed in the previous quarter, unless agreed otherwise with the Section 3 Compliance Administrator. Questions and assistance with requirements and reporting can be sent to LCreamer@mplspha.org

GENERAL GUIDANCE AND DEFINITIONS

Section 3 of the Housing and Urban Development Act of 1968 (codified at 12 U.S.C. 1701u and implemented at 24 CFR Part 75, hereinafter, "Section 3"), as amended, requires that economic opportunities, most importantly employment, generated by certain U.S. Department of Housing and Urban Development ("HUD") financial assistance shall be directed to low- and very low-income persons, particularly those who are recipients of government assistance for housing, or residents of the community in which the Federal assistance is spent.

Section 3 Worker means;

Any worker who currently fits or when hired within the past five years fit at least one of the following categories, as documented:

1. The worker's income for the previous or annualized calendar year is below the income limit established by HUD. (Note: Income is considered for the worker only and not based on household)
2. The worker is employed by a Section 3 business concern.
3. The worker is a YouthBuild participant.

A Targeted Section 3 worker for public housing financial assistance means a Section 3 worker who is:

1. A worker employed by a Section 3 business concern; or
2. A worker who currently fits or when hired fit at least one of the following categories, as documented within the past five years:
 - i. A resident of public housing or Section 8-assisted housing;
 - ii. A resident of other public housing projects or Section 8-assisted housing managed by the PHA that is providing the assistance; or
 - iii. A YouthBuild participant.

BENCHMARK GOALS

1. **25 percent** or more of the total number of labor hours worked by all workers on the project employed with public housing financial assistance in MPHA's fiscal year are **Section 3 Workers**; and
2. **5 percent** or more of the total number of labor hours worked by all workers on the project employed with public housing financial assistance in MPHA's fiscal year are **Targeted Section 3 Workers**.

HUD INCOME LIMITS

Low- and very low-income limits are defined in Section 3(b)(2) of the Housing Act of 1937 and are determined annually by HUD. These limits are typically established at 80 percent and 50 percent of the area median individual income. Most recent HUD income limits may be obtained from:

<https://www.huduser.gov/portal/datasets/il/il2023/2023summary.odn>

Income Eligibility Guideline: FY 2023 Minneapolis HUD Income Limits
Minneapolis-St. Paul-Bloomington, MN-WI HUD Metro FMR Area

Very Low (50%) Income Limit	No more than \$ 43,500 or
Low (80%) Income Limit	No more than \$ 66,300

Note: a Section 3 worker can be either a very low or low-income individual.

HIRING PRIORITIES

Employment and training opportunities created by **public housing financial assistance** shall be given to Section 3 Workers in the following order of priority:

- **P1:** To residents of the public housing projects for which the public housing financial assistance is expended;
- **P2:** To residents of other public housing projects managed by MPHA or for residents of Section 8-assisted housing managed by MPHA;
- **P3:** To participants in YouthBuild programs; and
- **P4:** To low- and very low-income persons residing within the metropolitan area in which the assistance is expended.

Part I: WORKFORCE COMPOSITION

Total Number of <u>All Workers</u> who worked on the Project	Total Number of <u>Section 3 Workers</u> who worked on the Project	Total Number of <u>Targeted Section 3 Workers</u> who worked on the Project

Part II: LABOR HOUR BENCHMARKS (25% and 5% goal)

Report labor hours worked on this project broken down by ALL Workers, Section 3 Workers and Targeted Section 3 Workers.

Labor Hours on the Project for <u>ALL Workers</u>	Labor Hours on the Project for <u>Section 3 Workers</u>	Labor Hours on the Project for <u>Targeted Section 3 Workers</u>

Attach documents supporting the data provided in this section and check the boxes below:

- LCP Tracker report certifying labor hours worked
- Other salary-based or time-and-attendance payroll records certifying labor hours

Part III: SUBCONTRACTORS

Did you have any subcontractors who performed work on this contract?

- YES NO (If **yes**, complete the table below and attach this same report form for each of the subcontractors to identify their hiring and labor hours)

Subcontractor Name	Trade	Subcontract Amount	Start Date	End Date	Business Certification (MBE, WBE, SBE, Section 3)

Part IV: QUALITATIVE EFFORTS (24 CFR Part 75.15)

Check the boxes that apply to demonstrate your good faith efforts to satisfy your section 3 obligations.

- Engaged in outreach efforts to generate job applicants who are Targeted Section 3 Workers, including notifying MPHA’s Section 3 team, posting job openings at the job site, HUD Opportunity Portal, social media pages, contacting Resident Advisory Councils, and other platforms;
- Contacted agencies administering Minneapolis YouthBuild Programs, and requesting their assistance in recruiting Minneapolis YouthBuild Program participants for training opportunities and employment positions;
- Consulted with state and local agencies administering training programs, such as those funded through Workforce Investment Act, unemployment compensation programs, community organizations and other officials or organizations to assist with training and recruiting Section 3 Workers and TargetedSection 3 Workers;
- Held job fairs;
- Provided or connecting Section 3 Workers and Targeted Section 3 Workers with assistance in seeking employment, including: drafting resumes, preparing for interviews, and finding job opportunitiesconnecting residents to job placement services;
- Provided or referring Section 3 Workers to services supporting work readiness and retention (e.g., work readiness activities, interview clothing, test fees, transportation, child care);
- Assisted Section 3 Workers to obtain financial literacy training and/or coaching;
- Engaged in outreach efforts to identify and secure bids from Section 3 Business Concerns.
- Provided technical assistance to help Section 3 Business Concerns understand and bid on contracts;Divided contracts into smaller jobs to facilitate participation by Section 3 Business
- Concerns; Provided bonding assistance, guaranties, or other efforts to support viable bids from Section 3 Business Concerns;
- Promoted use of Section 3 Business Registries designed to create opportunities for Section 3, disadvantaged and small businesses.

Part V: NOTES AND COMMENTS (If needed, attach additional sheets)

By signing below, I hereby certify and declare under penalty of perjury under the laws of the United States and the State of Minnesota that the information provided on this form, as well as all documentation provided in support thereof, are true and correct, and that I am authorized on behalf of the Company to make this certification. Furthermore, I certify that I will maintain this documentation for the time period required for record retentions in accordance with applicable program regulations or, in the absence of applicable program regulations, in accordance with 2 CFR part 200. I will make these records available to MPHA and/or HUD upon request.

Signature

Name and Title

Date

ADDITIONAL GUIDANCE FOR CONTRACTORS AND VENDORS

RECORDKEEPING: 24 CFR Part 75.31

Contractors, subcontractors and other recipients or sub-recipients must maintain documentation to ensure that workers meet the definition of a Section 3 Worker or Targeted Section 3 Worker as follows:

For a worker to qualify as a Section 3 worker, one of the following must be maintained:

1. A worker's self-certification that their income is below the income limit from the prior
2. calendar year;
3. A worker's self-certification of participation in a means-tested program such as public housing or Section 8-assisted housing;
4. Certification from a PHA, or the owner or property manager of project-based Section 8-assisted housing, or the administrator of tenant-based Section 8-assisted housing that the worker is a participant in one of their programs;
5. An employer's certification that the worker's income from that employer is below the income limit when based on an employer's calculation of what the worker's wage rate would translate to if annualized on a full-time basis; or
6. An employer's certification that the worker is employed by a Section 3 business concern.

For a worker to qualify as a Targeted Section 3 worker, under Public Housing Assistance Programs one of the following must be maintained:

1. A worker's self-certification of participation in public housing or Section 8-assisted housing programs;
2. Certification from a PHA, or the owner or property manager of project-based Section 8-assisted housing, or the administrator of tenant-based Section 8-assisted housing that the worker is a participant in one of their programs;
3. An employer's certification that the worker is employed by a Section 3 business concern; or
4. A worker's certification that the worker is a YouthBuild participant.

OTHER

- A contractor/vendor may report on Section 3 workers and Targeted Section 3 workers for five years from when their certification as a Section 3 worker or Targeted Section 3 worker is established.
- Income limits are individual and not household.
- MPHA's Section 3 Worker Certification Form can be used to establish eligibility as a Section 3 Worker and Targeted Section 3 Worker.
- To calculate the labor hour benchmark, see the graphics below:



- See HUD's Section 3 Regulation codified at 24 CFR Part 75, Labor Hour Benchmarks and FAQ at <https://mphaaonline.org/careers/section-3/>
- Questions about MPHA's Section 3 program or completing this form can be directed to MPHA's Section 3 Coordinator at LCreamer@mplspha.org

SECTION 3 WORKER CERTIFICATION FORM (24 CFR §75)
(Public Housing Financial Assistance Programs Only)



PART I: EMPLOYEE INFORMATION (to be completed by the worker)

Name:	Hiring Priority (check the applicable box)					
Address:	<input type="checkbox"/> P1: Resident of MPHA's public housing project where the work is performed;					
	<input type="checkbox"/> P2: Residents of other projects managed by MPHA;					
	<input type="checkbox"/> P3: Participants in YouthBuild programs; and					
	<input type="checkbox"/> P4: Other low- and very low-income person residing within the Minneapolis metropolitan area.					
Phone Number:	Email Address:					
Gender:	Age Group:	18-24	25-34	35-44	45-64	65+
		<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
How did you hear about the job?	Are you a Trade Union member? If yes, state: Name: _____ Enrollment Date: _____					

SECTION 3/TARGETED SECTION 3 WORKER INFORMATION

- 1. Based on the below definition, do you qualify as a Section 3 Worker?** Yes No
Section 3 Worker means any worker who currently fits or when hired within the past five years fit at least one of the following categories, as documented:
 The worker's income for the previous or annualized calendar year is below the income limit established by HUD (*maximum of \$66,300 per worker in 2023. See <https://mphaonline.org/> for more information*).
 The worker is employed by a Section 3 business concern.
 The worker is a YouthBuild participant.
- 2. Based on the below definition, do you qualify as a Targeted Section 3 Worker?** Yes No
A Targeted Section 3 worker for public housing financial assistance is a Section 3 worker who:
 A worker employed by a Section 3 business concern; or
 A worker who currently fits or when hired fit at least one of the following categories, as documented within the past five years:
 i. A resident of public housing or Section 8-assisted housing;
 ii. A resident of other public housing projects or Section 8-assisted housing managed by the PHA that is providing the assistance; or
 iii. A YouthBuild participant.

By signing below, I hereby certify and declare under penalty of perjury under the laws of the United States and the State of Minnesota that the above information is true and correct, and further agree to provide the Minneapolis Public Housing Authority with documentation verifying my Section 3 eligibility upon request.

Worker Signature: _____ **Date:** _____

PART II: EMPLOYER AND PROJECT INFORMATION (to be completed by the employer)

Employer Name:	MPHA Contract Number and Project Description:	Total Hours Worked by this Worker on this Project:
Work Location:	Position/Job Title:	Pay Rate:
Permanent: YES <input type="checkbox"/> NO <input type="checkbox"/>	Hire Date:	End Date:
Does your business qualify as a Section 3 Business based on definition in 24 CFR Part 75.5? YES <input type="checkbox"/> NO <input type="checkbox"/>		

By signing below, I hereby certify and declare under penalty of perjury under the laws of the United States and the State of Minnesota that, based upon Company's payroll records and personnel file, the information provided above is true and correct, and that I am authorized on behalf of the Company to make this certification.

Employer Contact Name: _____ **Tel/Email:** _____

Signature: _____ **Date:** _____

MPHA has determined the disclosure of this document, which includes the home address and private financial information of a public housing resident, would constitute an unwarranted invasion of personal privacy per Government Code section 6254(c), and therefore exempts this record from disclosure under the Minneapolis Public Records Act.

Certification of Payments to Influence Federal Transactions

U.S. Department of Housing
and Urban Development
Office of Public and Indian Housing

Public reporting burden for this information collection is estimated to average 30 minutes. This includes the time for collecting, reviewing, and reporting data. The information requested is required to obtain a benefit. This form is used to ensure federal funds are not used to influence members of Congress. There are no assurances of confidentiality. HUD may not conduct or sponsor, and an applicant is not required to respond to a collection of information unless it displays a currently valid OMB control number.

Applicant Name

Program/Activity Receiving Federal Grant Funding

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 an 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 sub recipients 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.

I hereby certify that all the information stated herein, as well as any information provided in the accompaniment herewith, is true and accurate.

Warning: HUD will prosecute false claims and statements. Conviction may result in criminal and/or civil penalties. (18 U.S.C. 1001, 1010, 1012; 31 U.S.C. 3729, 3802)

Name of Authorized Official

Title

Signature

Date (mm/dd/yyyy)

MPHA Contract No. _____
Appendix No. _____, State and Federal Data Privacy Statement

The undersigned Vendor and persons performing services under Contract No. _____ may have access to MPHA data that is classified private data under the Minnesota Government Data Practices Act, Minn. Stat. §13.01 et. al. and applicable federal law.

Data about tenants or program participants, including but not limited to their names, unit numbers and property addresses, except for highrise buildings, are benefit data and private. See Minn. Stat. §13.462. Vendor will ensure that persons who receive private data will protect the status of such data. Unauthorized disclosure of private data is subject to civil and criminal penalties.

Vendor will ensure that persons who have access to private data will comply with state and federal law. No one shall obtain, access, view, disclose or reproduce the private data for any purpose except when needed to perform this contract.

Vendor will return to MPHA or confidentially destroy all copies of private data when no longer necessary to perform the contract.

Vendor will not disclose private data to an Unauthorized Person. An Authorized Person is a person who has access to the private data without a work assignment that reasonably requires the data regardless of work assignment for a purpose not authorized by Minn. Stat. § 13.05 subd. 5.

Vendor will prevent a Breach of Security. A Breach of Security means the unauthorized acquisition (as defined in Minn. Stat. § 13.055) of MPHA private data that compromises the security and classification of the data. If a Breach of Security occurs, Vendor will comply with the notice and report procedures in Minn. Stat. § 13.055

Date: _____

Print Name of Vendor

By: _____
Print Name

Its: _____
Print Title

Signature: _____

SECTION 14 01 20 / 14 01 30

**OWNERS FORM OF VERTICAL TRANSPORTATION
MAINTENANCE AGREEMENT AND SPECIFICATIONS
FOR FULL COVERAGE**

ON

**TWENTY-THREE (23) HYDRAULIC ELEVATORS
THREE (3) HYDRAULIC MATERIAL LIFTS
FIFTY-SIX (56) TRACTION ELEVATORS**

AT

**MPHA MAIN OFFICE
1001 WASHINGTON AVENUE NORTH
MINNEAPOLIS, MN**

DATE: September 21, 2023

VDA NO.: 70328/AB

Elevator Contractor: _____

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DIVISION 14 – CONVEYING EQUIPMENT

14 00 00 Conveying Equipment

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14 01 30 – Maintenance of Material Lifts – Full Coverage Agreement and Specifications

_____ (hereinafter called the Contractor) shall furnish services to MPHA (hereinafter called the “Owner” OR “Owner's Representative”) c/o _____

(hereinafter called the (“Owner” OR “Owner's Representative”) on the following vertical transportation systems and related equipment located at MPHA – Various Locations, 1001 Washington Avenue North, Minneapolis, MN:

- Twenty-three (23) Hydraulic Units
- Three (3) Material Lifts
- Fifty-six (56) Traction Units

PART 1 - GENERAL CONDITIONS

1.1 AGREEMENT INTENT

- A. The purpose of this agreement is to state and define the terms and conditions under which the Contractor shall provide full comprehensive maintenance and repair services for the vertical transportation systems identified, and the terms and conditions under which the “Owner” OR “Owner's Representative” shall compensate the Contractor for such services rendered.
- B. It is the intent of this Agreement to ensure all requirements, procedures, tests, inspections, service practices, component repairs, equipment renewals, system adjustments, filing procedures and recording documentation as referenced, mandated or otherwise implied herein are all inclusive, and to guarantee to the “Owner” OR “Owner's Representative” that the absence or omission of a particular item of work, service or procedure shall not alleviate the Contractor of the sole responsibility to provide such labor, expertise, materials, equipment, services or other procedures applicable to the Agreement and practical requirements unless same is specifically excluded; or prorated herein.
- C. Minimum standards and requirements for services to be rendered shall be performed in accordance with the O.E.M specifications, Maintenance Control Program, and relative time periods. Where there is no specific requirement for a preventive maintenance procedure, the original equipment manufacturer (O.E.M.) standard shall be employed unless there is no relative documentation available. The absence of both a contract requirement herein and the O.E.M. design standard shall cause the contractor to engage the services of a qualified engineer to

formulate the relative standards and incorporate same as an addendum to this agreement with the Professionals' Seal and Stamp.

- D. In addition, the intent of this Contract is to require a minimum staffing level of one (1) full time dedicated service Mechanic and additional service technician(s)/apprentice(s) solely for the purpose of fulfilling the preventive maintenance requirements. Contract requirements for emergency callback services, inspection and testing services, repair and/or direct replacement component renewal procedures are not considered preventive maintenance and will require additional staffing/labor above the minimum levels specified.
- E. This agreement is subject to periodic review and audit for compliance.

1.2 DEFINITIONS OF TERMS

- A. The term “Owner” OR “Owner's Representative” as used herein, refers to the person, organization, corporation or other entity representing building ownership and the relative responsibilities under this Agreement.
- B. The term “Owner” OR “Owner's Representative” or references of similar import, as used herein, refers to any outside agent hired or retained by the Owner(s) for the purpose of providing management services that has been deemed a legal representative of the Owner(s) or any person designated by the Owner(s) as the legal representative of the Owner(s) for the purpose of coordinating and purchasing this Agreement.
- C. The term “Authority,” “Governing Authority (GA),” “Authority Having Jurisdiction (AHJ),” or references of similar import, as used herein, shall mean the local government agency responsible for enforcement of vertical transportation safety codes and local laws or their designated representative, private inspection agency, consultant or other licensed designee.
- D. The term “Contractor,” “Elevator Contractor” or “Vendor” as used herein, refers to any persons, partners, firm, corporation or officer(s) of such companies having an agreement with the “Owner” OR “Owner's Representative” to furnish qualified labor and materials for the execution of the services and maintenance work described herein.
- E. The term “Subcontractor,” as used herein, refers to any persons, partners, firm or corporation having materials and/or labor for the execution of the work herein described.
- F. The term “Consultant,” as used herein, refers to VDA.
- G. For contractual hour allocation purposes maintenance hours shall be defined as scheduled service visits to perform cleaning, lubrication, minor parts replacement, minor adjustments and observations completed by mechanics regularly assigned to performing those duties.
- H. For contractual hour allocation purposes callbacks shall be defined as any unscheduled service call and include the time to travel to the jobsite, diagnose the problem(s), correct the problem(s), and return the elevator to normal service.

- I. For contractual hour allocation purposes, the repair work definition shall be the same as the one and two-person repair definitions in the Master Labor Agreement between the Contractor and the International Union of Elevator Constructors.
- J. The term “Agreement,” “Contract” or “Contract Documents,” as used herein, consists of this specific document, and any alternates, addenda, or substitutions as may be referenced under Exhibits or Riders approved by the parties for the final execution of the Agreement.

1.3 ABBREVIATIONS AND SYMBOLS

- A. Abbreviations for associations, institutions, societies, reference documents and/or governing agencies, which may appear in this Contract Document, shall mean the following:

ADA	Americans With Disabilities Act
AIA	American Institute of Architects
ANSI	American National Standards Institute
ASME	American Society of Mechanical Engineers
BOCA	Building Officials and Code Administrators International, Inc. (Basic National Building Code)
A.H.J.	Authority Having Jurisdiction
G.A.	Governing Agency
NEC	National Electrical Code
OSHA	Occupational Safety and Health Administration

1.4 AGREEMENT COVERAGE

- A. The entire vertical transportation system(s) shall be maintained as hereinafter described, in accordance with the following detailed terms. Trained employees of the Contractor will use all reasonable care to keep the systems in proper adjustment and in safe operating condition, in accordance with all applicable codes, ordinances and regulations.
- B. The specifications are written in the singular with the understanding identical work, materials and equipment shall be provided for all vertical transportation units identified unless otherwise specified.
- C. Words in the singular shall mean the plural whenever applicable or as the content so indicates.
- D. With the exception of only those items specifically identified as being performed by others, the specifications are intended to include all engineering, material, labor, testing, and inspections needed to achieve work specified by the contract. Inasmuch as it is understood that any incidental work necessary to execute the Agreement is also covered by the Contract specifications, the Contractor is cautioned to familiarize himself with the existing equipment and job site conditions. Additional charges for material or labor shall not be permitted subsequent to execution of the Contractual Agreement for work, services or procedures covered herein.
- E. Maintenance coverage shall include, but is not limited to, preventive services, call-back services, inspection and testing services, repair and/or direct replacement component renewal procedures, and housekeeping.

1.5 HOURS OF WORK

- A. All scheduled work, callbacks and repairs shall be performed during regular working hours of the regular working days of the elevator trade 7:00 A.M. to 6:30 P.M. Monday through Friday, except union designated holidays. No overtime charges will be allowed for work during these hours.
- B. Scheduled repairs and/or other major adjustment procedures necessitating removal of an elevator for an extended period of time (longer than four [4] hours or extending past the normal workday) must be scheduled through the Owner's Representative. The Owner's Representative retains the right to have such work completed during overtime hours with the understanding the Contractor shall pay for the regular labor portion and the Owner's extraordinary obligation is extra premium labor costs only.
- C. Emergency callback services shall be provided twenty-four (24) hours per day, seven (7) days per week including weekends and holidays as further specified herein.

1.6 SOLE RESPONSIBILITY

- A. The maintenance work shall be performed only by Qualified Technicians and Mechanics directly employed and supervised by the Contractor, who are experienced and skilled in maintaining vertical transportation units similar to those to be maintained under this Contract and shall not be assigned or transferred to any agent or subcontractor without the express consent of the "Owner" OR "Owner's Representative".
- B. It is mutually agreed that the Contractor shall not be under any obligation hereunder to make any repairs or replacements except those incidental to the normal operation of the machinery, and that the Contractor is not required under this Contract to make repairs or replacements necessitated by reason of malicious damage, fire, including non-elevator component electrical fire, which are the result of causes beyond Contractor's control. All repairs, if necessitated by this paragraph, will be performed at the fees indicated in Exhibit A.
 - 1. It is mutually agreed that the Contractor shall make any and all repairs or replacements caused by Contractor's improper repair, negligent, or willful acts or omissions at Contractor's expense.

1.7 COMPENSATION

- A. Payment for services rendered shall be made on a monthly basis, within thirty (30) days of the end of each billing period. In addition, "Owner" OR "Owner's Representative" shall pay any tax imposed upon the Contractor by existing or future law, as due in conjunction with the services rendered or purchase of materials used to provide the services. No additional travel and/or sundries fees will be permitted.
- B. Payment for Emergency Call-back services shall be:
 - 1. Included in the fixed monthly lump sum price for services rendered twenty-four (24) hours per day, seven (7) days per week, without extra charge to the Purchaser/Owner.

- C. Unit prices for extra work items are to be priced per the Contractor's Schedule of Unit Prices for Extra Work Items (Exhibit C).

1.8 BREAKDOWN, MALFUNCTION OR DAMAGE

- A. Immediately upon the Contractor's discovery of any damage or signs of disrepair, mechanical breakdown or malfunction of, or cracks or breaks in any item to be repaired hereunder, they shall advise the "Owner" OR "Owner's Representative" and the Contractor shall place such "Out of Order" or warning signs as are appropriate with necessary barricades or other required protection as directed by the "Owner" OR "Owner's Representative". Such signs will be furnished by the Contractor upon request of the Owner and shall remain in place until necessary repairs are completed.

1.9 TRASH REMOVAL

- A. The Contractor shall arrange to dispose of all liquid and solid refuse produced under this agreement in a lawful, safe, and efficient and anti-pollutant manner subject to the prior approval of the "Owner" OR "Owner's Representative" at no cost to the Owner.
- B. The Contractor shall remove daily from the building, all garbage, debris, and other waste materials (whether solid or liquid) arising out of or in connection with its operations hereunder, and any such garbage, debris and other waste materials not immediately removed shall be temporarily stored in a clean and sanitary condition, approved by the "Owner" OR "Owner's Representative", in suitable garbage and waste receptacles, also approved by the "Owner" OR "Owner's Representative" and shall be kept covered except when filling or emptying them. The Contractor shall exercise care in removing such garbage, debris, and other waste materials from the building. The manner of such storage and removal shall always be subject in all respects to the continual approval of the Owner. No equipment or facilities of the Owner shall be used in such removal unless with its prior consent in writing. No such garbage, debris or other waste materials shall be permitted to be thrown, discharged, or disposed into or upon the streets bounding the Site of Work.

1.10 GRATUITIES/LOST AND FOUND

- A. No personnel employed in performing the Work shall solicit or accept gratuities, for any reason whatsoever, from passengers, tenants, customers, or other persons at the Site of the Work. Any articles found by such employees at the Site of the Work shall be immediately turned over to the office of the "Owner" OR "Owner's Representative". The Contractor shall instruct their employees (and shall cause any Subcontractor's to instruct their employees) in the provision of this numbered clause.

1.11 LABOR ACTIONS

- A. Whenever any labor strike, slowdown, work stoppage, picketing or other labor action which might interfere with the performance of the Contract, occurs at the Site of the Work as a result of

the Contractor's (or its Subcontractor's) utilization of particular means, methods or manpower to perform the Work required by this Contract, the Contractor shall pursue all remedies which are appropriate and available to him to avoid such interference including, but not limited to the utilization of supervisory and other non-union employees trained in the proper maintenance and repair of the equipment.

1.12 USE OF PATENTED MATERIALS

- A. The right to use all patented material, composition of matter, manufacturers, apparatus, or appliances required in connection with this Contract shall be obtained by the Contractor without separate or additional compensation.
- B. The Contractor shall indemnify the Owner and their agents against and save them harmless from all loss and expense incurred in the defense, settlement or satisfaction of any claims in the nature of patent infringement arising out of or in connection with the Owner's use, in accordance with the preceding paragraph of this numbered clause, of such patentable subject matter or patented material, manufacturer's and/or their composition of matter, apparatus or appliances. If requested by the Owner, and if notified promptly in writing of any such claim, the Contractor shall conduct all negotiations with respect to and defend such claims without expense to the Owner.

1.13 GENERAL OBLIGATIONS

- A. Except with the prior written approval of the Owner, or as specifically authorized or required elsewhere herein, the Contractor shall not erect, maintain, or display any signs, posters, or advertising at the Site of the Work. Interior signs affecting public safety and security shall be in accordance with guidelines established by the Owner and shall be subject to the approval of the "Owner" OR "Owner's Representative".
- B. In order to effectuate the policy of the Owner, the Contractor shall comply with all provisions of federal, state, municipal, local and departmental laws, ordinances, rules, regulations and orders which affect the Contract and the performance thereof, except where stricter requirements are contained in these Specifications, in which event the latter requirements shall apply. The Contractor shall apply for any permits, licenses, or variances in the name of or on behalf of the Owner, where required by law or by the immediately preceding sentence shall obtain express written approval from the Governing Authority.
- C. The Contractor shall provide qualified labor or other assistance on behalf of the Owner for work performed by other trades, professionals, inspectors, and "Owner" OR "Owner's Representative" personnel when conditions warrant or upon request of the Owner. The "Owner" OR "Owner's Representative" shall approve all requests for the Contractor's labor assistance and, when applicable, shall approve requests for additional compensation by the Contractor under "Extra Work" provisions included herein.

1.14 COMMUNICATION

- A. CUSTOMER REPRESENTATIVE: A representative of the Contractor will be available to discuss with "Owner" OR "Owner's Representative" the elevator needs in the areas of

modernization, traffic handling ability, recommendations and requirements of Government Authorities, proper use, and care of the Units.

- B. MEETING WITH “OWNER” OR “OWNER'S REPRESENTATIVE”: Account Representative shall meet with “Owner” OR “Owner's Representative” on a quarterly basis. The meeting should consist of the following agenda items: (1) status of the account, (2) review of the prior quarter’s activities, (3) review of any problem areas. “Owner” OR “Owner's Representative” shall prepare and distribute minutes for these meetings.
- C. REPORTS: Contractor shall provide at each monthly meeting, detailed reports of the previous months activities including details by unit of all callbacks, repairs, testing, preventive maintenance along with dates, reason for car out of service, time taken out of service, task performed (PM, callback, repair, etc.), resolution to any problems, time placed back in service, total time out of service and a listing of all credits to be issued as a result of non-compliance with the requirements of this specification.

1.15 SUBSEQUENT EQUIPMENT MODERNIZATIONS/ALTERATIONS/UPGRADINGS

- A. Full comprehensive service and repair coverage shall be included under the terms of this Agreement when equipment and/or component systems represented herein are modified or upgraded.
- B. Such changes in equipment necessitating continuing full maintenance coverage may be initiated by the Owner under a separate voluntary extra cost upgrading Agreement with or without this Contractor’s permission or direct authorization and involvement before the work is performed.
- C. Modernized or otherwise upgraded systems and parts thereof shall automatically be included under the terms of this full comprehensive Agreement, whether such components are specifically identified or not, without extra cost to the Owner.
- D. All non-elective changes or modifications necessitated due to obsolescence, parts unavailability or the Contractor’s inability to maintain these systems in accordance with the Contract specifications shall be fully covered under this Agreement regardless of application, method or cost assignment for the life of the Contract. This paragraph is not intended to require the Contractor to modernize or replace an obsolete control system when sub-parts are no longer reasonably available. It does require the contractor to utilize like technology substitutions when original replacement parts are no longer available.
- E. At the Owner’s sole option modernized or otherwise upgraded systems and parts thereof may be automatically included under the terms of this full comprehensive agreement, whether such components are specifically identified or not, without extra cost to the Owner.
- F. Contractor Installed Maintenance and Diagnostic Aids
- G. The Contractor may install Maintenance and Diagnostic Aids provided the installed equipment does not interfere with the safety and operation of the maintained equipment and is installed according to all applicable code requirements. All required permit fees shall be paid by the Contractor. The Contractor assumes all liability related to any equipment installed under this section including patent and software copyright infringement liabilities. The Contractor may

remove equipment installed under this section at any time, subject to the requirements of the base Service Agreement and must verify the integrity of the original design and operation when the equipment is removed.

1.16 OBSOLESCENCE

- A. Component Obsolescence shall be defined as the inability to purchase and/or otherwise repair parts of the system no longer produced by the original equipment manufacturer or a third-party after-market supplier. Claims of component obsolescence shall not be allowed when replacement parts, components or assemblies of equivalent design and functionality are available in the market.
- B. In the event of component obsolescence as defined in Paragraph A above, the condition shall be reported to the Owner with the following information:
 - 1. Alternative equipment or component parts renewal options for restoration of the system due to obsolescence.
 - 2. Procurement and installation time for restoration of system service.
 - 3. Any safety code requirements that will be triggered by the alternative equipment or component renewal (i.e., including filing, tests and approvals).
 - 4. Certification by the manufacturer of the replacement parts that the parts meet or exceed the original equipment design intent including, but not limited to, durability, reliability, maintainability, longevity, and safety.
- C. Payment for obsolescence work shall be based on the extra cost to the contractor only.
 - 1. Labor cost over and above the time necessary for standard equipment and component renewal or repair procedures.
 - a. Contractual hourly rate schedule as provided under Exhibit 'A' shall be used to compute the extraordinary labor charge if applicable.
 - b. Actual material extra cost to the contractor minus the value of the standard component replacement cost plus a maximum of five percent (5%) mark-up on the cost variance only.
 - c. At Owner's option, a lump sum extra cost price may be employed in lieu of time and material as indicated above.
 - 2. Subsequent to the Owners authorization to proceed with an alternative obsolescence repair and approval of the relative extra cost, if any, the contractor shall immediately perform such work and restore operating services.
- D. The Owner shall retain the right to competitively bid obsolescence repairs and replacements; and such work as performed by another qualified contractor shall not diminish or otherwise alter the coverage provided under this agreement subject to the following:
 - 1. The maintenance contractor has the right to inspect work performed by others; and, when conditions warrant, reject obsolescence procedures that increase their contractual liability. The maintenance contractor shall provide written notification of acceptance or rejection.

2. Should the contractor reject an obsolescence repair made by others, the Owner may have a qualified third-party professional engineer evaluate the work and render a decision regarding the acceptability of the prevailing conditions or the Owner may terminate the maintenance contract and award the maintenance work to another Contractor at the Owner's sole discretion.

1.17 NOTICE BY AUTHORITY OR COMPANY TO REPAIR OR REPLACE

- A. The Contractor shall comply with all written recommendations of the governing authority or independent inspectors, consultants and insurance carriers employed by the Owner. However, Contractor is not required under this Contract to install new attachments or parts different from those now constituting the equipment, as recommended or directed by insurance companies, Government Authorities, or otherwise.

1.18 RECORD KEEPING

- A. A complete permanent record of inspections, maintenance, lubrication and callback service, including a Maintenance Control Program (MCP) shall be kept in the machine room or other designated location at the site of work, per the requirements of ASME A17.1 and the local AHJ. These records are to be available to "Owner" OR "Owner's Representative" at all times. The records shall indicate the reason the mechanic was in the building, arrival and departure time, the work performed, etc., and these records will be property of the Owner. Record keeping requirements shall include Contractor assigned maintenance personnel and scheduled preventive maintenance procedures, inspections, tests, and third party assisted examinations. Records shall be kept on site for the life of the Contract. Upon request, a copy of the records shall be provided to the Owner. The Contractor will interface with and utilize the Owners web-based maintenance software and shall maintain up to date records of all activities related to the elevators. The Owner will provide all necessary system training.

1.19 RECORD DRAWINGS

- A. Contractor shall provide and maintain two (2) complete sets of updated electrical wiring diagrams and control schematic drawings on file with the building and they are to become the property of the Owner for each group and/or individual system.

1.20 REPORTS BY CONTRACTOR

The Contractor shall quarterly (within thirty [30] days after the quarter ends) or at any time during the term of this Contract, upon written request of the Owner's Representative (within thirty [30] days of the request), render a report of maintenance inspections, callbacks, repairs or replacements made by the Contractor at the premises herein, itemized as to building, unit number, maintenance hours provided, parts installed, services performed and supply samples of lubricants, compounds, or other materials employed if requested. Vendor's maintenance/record keeping system shall comply with the requirements of the applicable ASME a17.1 maintenance control program (MCP) and Minnesota building code rule 1307 (Minnesota elevator code).

1. Quarterly reporting requirements shall include a quarterly summary of maintenance hours detailed by name of employee, date work was performed and location of work by building name. In addition, the quarterly report shall include completed versus scheduled preventative maintenance procedures and planned repairs for the just completed quarter and a twelve (12) week projected schedule for preventative maintenance procedures and planned repairs.
2. Quarterly reporting requirements shall include total maintenance hours with a breakdown indicating the number of hours assigned, by building, for preventive maintenance, regular time callbacks, overtime callbacks and repairs. Backup documentation for the individual categories will be provided as requested by the Owner.
3. Quarterly reporting requirements shall include updated Safety Test Matrix's on a per building/per unit basis.
4. All quarterly contractor reports shall be uploaded into the current MPHA cloud-based website.

1.21 PRICE ADJUSTMENT

A. Labor Contracts and Overtime:

1. It is further understood and agreed that the Contractor shall furnish to the Owner in duplicate, a copy of their current labor contract and any subsequent labor contracts effective during the term of this Contract pertaining to his elevator maintenance personnel, and the Contractor further agrees to furnish any additional information concerning overtime charges to the Owner at any time upon request.

B. The Contractor shall be entitled to a review of their labor and material costs for the purpose of adjusting the maintenance fee thirty (30) days prior to the annual renewal date of this Agreement each year.

C. Upon submission of proof, satisfactory to the Owner, that the Contractor's actual labor and/or material costs for performance of service have changed, the monthly price for service coverage shall be adjusted in an amount equal to the established variance based on the following formula:

1. Eighty percent (80%) of the current fee shall be used to represent the labor portion of the contract.
2. Twenty percent (20%) of the current fee shall be used to represent the material portion of the contract.

D. The current labor portion of the contract shall be increased or decreased by the percentage of increase or decrease of the current straight-time hourly rate for a mechanic, compared with same rate used for the previous year's labor portion of the agreement.

1. The initial base labor cost amount is \$_____. This represents the cost of the maintenance mechanic's hourly wage with associated cost fringe benefits. (No additional overhead or profit.)

E. The current materials portion of the contract shall be adjusted based on the established monthly difference in the "Producer Commodity Prices for Wholesale Metals and Metal Products Index"

as published by the United States Department of Labor, Bureau of Labor Statistics during the month within such adjustment occurs for comparison.

1. Using August 2023 as the base month, the material factor is \$310.279.
- F. Annual adjustments shall be effective the first day of the new Contract year and shall remain unchanged for the next twelve (12) months.
- G. Notwithstanding anything to the contrary, the maximum annual increase shall not be more than four percent (4%) of the total contracted payment for the preceding Contract year.

1.22 INSURANCE COVERAGE

- A. The Contractor shall not commence work under this Contract until it has been agreed to and obtained the following minimum insurance coverage:
 1. The Contractor hereby agrees, to the fullest extent permitted by law, to assume the entire responsibility and liability for the defense of and to pay and indemnify the Owner, their agent and employees against any loss, cost expense, liability or damage and will hold each of them harmless from and pay any loss, cost, expense, liability or damage (including without limitation, judgment, attorney's fees, court costs and the cost of appellate proceedings) which the Owner incurs because of sickness, injury to or death of any person or on account of damage to or destruction of property, including loss of use thereof, or any other claim arising out of, in connection with, or as a consequence of the performance of the services or the furnishing of the equipment and supplies and/or any acts or omissions of the Contractor or any of its officers, directors, employees, agents, subcontractors, or anyone directly or indirectly employed by the Contractor for whom it may be liable as it relates to the scope of this Contract.
 2. The Contractor shall, before the commencement of any provisions of any services, file certificates, showing existence of such insurance with the Owner, and such insurance shall be subject to the Owner's approval as to the adequacy of protection and compliance with this Contract, and the satisfactory character of the Insurer. Such insurance shall be placed with Licensed and Admitted carriers who write insurance and do business in the State of Minnesota Licensed for Surplus is not acceptable.
 3. The Owner agrees to give the Contractor notice within a reasonable time (Sunday and holidays excluded) of any accidents, alterations, or changes affecting the equipment covered by this contract and of any change of Ownership. It is understood and agreed that the Contractor will notify the Owner immediately when any equipment becomes unsafe or operates in a manner which might cause injury to anyone using said equipment and it is further understood and agreed that the Contractor will immediately remove any equipment from service when the equipment becomes unsafe or operates in a manner which might cause injury to anyone using said equipment.
 4. The Contractor agrees to maintain such insurance as will fully protect the Contractor, Agent, and the Owner of the building from any and all claims under worker's compensation act or employers' liability laws, and from any and all other claims of whatsoever kind of nature for damage to property or for bodily injury, including death to anyone whomsoever, that may arise from the operations of the Contractor.
 5. Prior to the commencement of operations, Contractor will purchase and maintain the following minimum insurance as will protect it, the "Owner" OR "Owner's Representative"

from any claim which may arise out of a result of Contractors operations under this service Contract whether such operation shall be by the Contractor, its employees or anyone directly or indirectly employed by any of them, or by anyone for whose acts they may be liable:

- a. Commercial General Liability Insurance on an Occurrence basis including:
 - 1) Bodily Injury, Property Damage including Personal Injury and death.
 - 2) Per Project” endorsement.
 - 3) Broad form property damage liability.
 - 4) Blanket Contractual Liability including contractual liability assumed by this contract.
 - 5) Independent Contractors Protective Liability coverage. The minimum limit for Comprehensive Liability insurance coverage shall be:
 - a) Each Occurrence: \$1,000,000
General Aggregate: \$2,000,000
including “Per Project”
endorsement Products & Completed
Operations Aggregate: \$1,000,000
 - b) Excess liability limits of not less than:
Each Occurrence: \$4,000,000
Coverage to follow form of underlying policies.
 - c) Worker’s Compensation Insurance - In accordance with the statutory limits.
 - d) Employer’s Liability Insurance – With a minimum limit of not less than:
Bodily Injury by Accident: \$1,000,000 each accident
Bodily Injury by Disease: \$1,000,000 each employee
Bodily Injury by Disease: \$1,000,000 policy limit
 - e) Statutory State Disability Benefits Insurance covering all persons employed by the Contractor in connection with this contract.
- B. The foregoing insurance policies shall be primary to any other insurance which may be carried by the Owner and shall name Owner as additional insured with a specific policy endorsement as follows:
 - Minneapolis Public Housing Authority
 - VDA, Inc.
- C. Certificates of Insurance evidencing such coverage shall be filed with the Owner prior to the commencement of the contract and renewal of insurance certificates shall be furnished prior to the expiration of any coverage herein.
- D. The policies shall contain a provision giving Owners at least thirty (30) day prior written notice of any change or cancellation of such insurance, in the event of cancellation of Non-Payment of Premium, in which ten (10) day notice will be provided. This notice will be included on the Certificate of Insurance.

- E. All insurance must be with a licensed and Admitted (licensed for Surplus Lines is not acceptable) insurance carrier with and maintain no less than, A.M. Best's rating of "A-, size VII" and shall be acceptable insurance carriers subject to the discretion of Owner.
- F. The Contractor agrees that the required insurance is not intended to limit the Contractor's liability in the event the Contractor is deemed to be negligent in causing bodily injury or property damage during the course of its operation.
- G. The Contractor will, at its own expense, maintain physical damage insurance in the amounts and against the perils desired by the Contractor on all property owned or rented by the Contractor. The Contractor hereby waives its rights of recovery against the Owner for any damage or loss to property of any kind which is owned or rented by Contractor or for which the Contractor is liable.

1.23 CANCELLATION

- A. The "Owner" OR "Owner's Representative" shall have the right to cancel this Contract upon at least thirty (30) days prior written notice to the Contractor of its election to do so without penalty for the following:
 - 1. Elective upgrading of apparatus awarded to another vendor.
 - 2. Substandard services and/or poor maintenance practices as confirmed by the Consultant or other qualified professional.
 - 3. Failure to comply with governing authority directives and/or citations.
 - 4. Cost analysis completed prior to expiration date.
- B. For the purposes of this maintenance Agreement if the Owner finds fault in the Contractor's performance, the Owner shall notify the Contractor citing the examples of default and this communication will be presented via certified mail. The Owner will then allow the Contractor thirty (30) days from the date of receipt of the certified letter for the Contractor to reasonably cure said defaults.
- C. In addition to the rights provided in paragraph "A" hereunder, the "Owner" OR "Owner's Representative" shall have the right to cancel this Contract immediately, upon the occurrence of any of the following contingencies: bankruptcy of the Owner or Contractor, mortgage foreclosure, condemnation, destruction, or transfer or conveyance of Title to the premises in which the subject equipment is located or the premises in which the subject equipment is located is rendered unusable in the opinion of the "Owner" OR "Owner's Representative".
- D. Under no circumstances, unless allowed by the Owner's Representative, will there be any shutdown or breakdown that last longer than three (3) days for traction elevators and two (2) days for hydraulic elevators. This includes locating the problem, procurement of parts, installation of these parts and placing the elevator back into safe, uninterrupted service. The Contractor must be so equipped to meet these conditions. If the Contractor is not able to obtain parts, necessary technical and engineering advice, etc., the Contractor will be considered in default, giving sufficient justification to the Owner to immediately cancel this agreement and obtain these services from any Contractor the Owner may choose.
- E. Cancellation of this Agreement prior to the expiration date shall entitle the Contractor to payment for services rendered up to and including the date of cancellation; and the "Owner" OR "Owner's

Representative” shall not be responsible for any expenses or subsequent costs that may be incurred by the Contractor as a result of an early cancellation or standard Contract Agreement expiration.

1.24 NOTICES

- A. All notices to be given under the Contract shall be in writing and addressed to the party to be notified, postage prepaid, by registered or certified mail, return receipt requested, or by delivering the same in person to such party. All notices shall be deemed to have been given as of the date of delivery indicated on the return receipt or date of failure to deliver by reason of changed address of which no notice was given or refusal to accept delivery, or when personally delivered. Any party or person to whom notices are to be sent or given pursuant to the Contract may, by notice to all such other parties or persons mentioned herein, change its address for the giving of notices, provided, however, that a notice of change of address shall be deemed effective only when received by the addressee. Notices to be given hereunder shall be sent or delivered to:

Contractor:

“Owner” OR “Owner's Representative”:

_____ (Building Entity, if applicable)

Minneapolis Public Housing Authority
1001 Washington Avenue North
Minneapolis, Minnesota 55401-1043

1.25 PAYMENT/TERMS

- A. This service will be furnished from January 1, 2024, for a period of three (3) years with the option of two (2), one (1) year extensions. All replacement parts, repairs, adjustments and associated services, as specified herein, shall be supplied, installed, performed and conducted at the Contractor's sole cost and expense unless otherwise specified herein.
 - 1. The Contractor and MPHA shall have the option to extend this agreement with an additional two (2), one (1) year extension options with HUD and Board approval.



2. The "Owner" OR "Owner's Representative" agrees to pay the Contractor on a monthly basis, the fee of _____ Dollars (\$_____)the term of this Agreement, subject to price adjustments as specified herein.
 - a. All work including standard maintenance, repair, or extraordinary work of any kind shall be invoiced using the current MPHA drop box system.
 - b. A Monthly invoice shall be provided in within fifteen (15) days after the month ends and shall detail charges for standard maintenance in the following manner. Each property shall be individually listed on the invoice and identified by project number and address. The number of maintenance hours provided during the quarter to-date, the target maintenance hours for the quarter to-date, the variance between the actual and target maintenance hours for the quarter to-date, and the callback and repair hours for the quarter to-date shall be listed in columns to the right of the address. Columns shall also be provided for the base monthly maintenance fee per building and an adjusted fee that will include any refunds as a result of not providing the minimum maintenance hours required. The invoice shall be accompanied by Certified Payroll Affidavits for all work performed during the month.
 - c. Extraordinary work and/or other work, as approved by the Purchaser/Owner in writing, shall be invoiced separately upon completion and acceptance of the work or other services performed as detailed below:
 - 1) Contract Identification
 - 2) Date of Service
 - 3) Service Identification: Completely describe the service performed and/or materials provided, including the project number and building address where service was performed.
 - 4) Work order originator: MPHA work order number: To be given to the vendor by the person requesting service and to be written on the invoice next to the invoice number.
 - 5) Unit prices: The price shall be separated into labor, materials, quantities, rates and extended totals.
 - 6) Total unit prices (from item 5).
 - 7) Permit fee: A copy of the approved permit and evidence of proper closure shall be submitted with the invoice.
 - 8) Expenses: Itemized reimbursable expenses including mileage and travel time.
 - 9) Total charges: Summarize prices from items 6, 7, and 8.
 - 10) Copies of time sheets, material invoices, and a certified payroll affidavit shall accompany invoice.
 - d. Any state or local tax charges, which may be applicable, are not included in the monthly fee indicated. Applicable taxes shall be itemized on the monthly billing invoice statement by material line item or labor charge as appropriate.

1.26 NON-PAYMENT

- A. The "Owner" OR "Owner's Representative" may have the Contractor's work and systems' performance operations checked monthly to ensure the Contractor is performing in accordance with this Contract. If the work requirements are not maintained, the "Owner" OR "Owner's Representative" will retain the monthly payment to the Contractor until the Consultant verifies

that the work and/or operating performance is back to standard. If three (3) consecutive months of substandard maintenance is noted, the Owner has the right to immediately cancel the Contract without notice to the Contractor.

- B. The Consultant, “Owner” OR “Owner's Representative” may withhold approval for payment on any request to such extent as may be necessary to protect the Owner from loss on account of:
 - 1. Negligence on the part of the Contractor to execute the work properly or failure to perform any provisions of the Contract. The Owner, after three (3) days written notice and/or email to the Contractor, may, without prejudice to any other remedy, make good such deficiencies and may deduct the cost of remedy from the maintenance Contract.
 - 2. Claims filed or reasonable evidence indicating probable filing of claims due to the Contractor’s failure to perform.
 - 3. Failure of Contractor to make payments properly to subcontractors for material and labor used to fulfill contractual requirements.
 - 4. Damage to the building and/or equipment as a result of work performed or another subcontractor’s failure to perform.

1.27 ERRORS AND OMISSIONS

- A. Contractor shall notify the “Owner” OR “Owner's Representative” and Consultant in writing regarding any necessary services, coverage or items which may have been omitted from the maintenance Contract specifications and any irregularities, discrepancies or duplications that could affect the full comprehensive intent of the Agreement.
 - 1. Any duplication of work or coverage is specified as a means of demonstrating the contract requirements, but such duplication if any, is not intended to expand coverage or increase requirements for such work or services and such duplication shall not increase costs or provide justification for extra or additional charge to the “Owner” OR “Owner's Representative”.

1.28 LABOR LAWS

- A. The Contractor performing work under this contract shall comply with applicable provisions of all federal, state, and local labor laws.

1.29 BACKGROUND CHECKS

- A. The Contractor agrees to submit to background checks, as required by the Owner, for any of their employees who are assigned to work on this project, or in the building, at any time at the Owner’s expense

1.30 ASSIGNMENTS

- A. Neither party to the Contract shall assign the Contract or sublet it as a whole without the written consent of the other, nor shall the Elevator Contractor assign any payment due them or to become due to them hereunder without the previous written consent of the Owner.

1.31 FORCE MAJEURE

- A. Neither party shall be liable by reason of any failure or delay in the performance of its obligations due to strikes, lockouts, riots, fires, explosions, acts of God, war, governmental action or any other cause which is beyond the reasonable control of such parties. The performance of such party shall be excused for such reasonable time as may be required to resume performance following cessation of such cause.

1.32 CONTRACTOR'S LICENSE

- A. If required by law, Contractor certifies that it is licensed in the state, municipality, and/or local jurisdiction where the property is located to perform the elevator maintenance services pursuant to this Agreement, and that the license will be maintained current and valid for the Initial Term and any renewal term of this Agreement.

1.33 WAIVER

- A. A waiver by either party of any term or condition of this Agreement in any instance shall not be deemed or construed as a waiver of such term or condition for the future, or of any subsequent breach thereof. All remedies and rights of the parties contained in this Agreement shall be cumulative.

1.34 ATTORNEYS' FEES

- A. In the event litigation be commenced by either party hereto against the other in connection with the enforcement of any provision of this Agreement, the losing party shall pay all court costs and shall pay to the prevailing party all expenses incurred by the prevailing party in litigation, including attorneys' fees in a reasonable amount to be determined by the court. The amount so allowed as attorneys' fees shall be taxed to the losing party as costs of the suit, unless prohibited by law.

1.35 LIMITATION OF LIABILITY

- A. It is expressly understood and agreed by the Parties that "Owner" OR "Owner's Representative", its parent, subsidiaries and/or affiliates shall not be liable or responsible in any way for any loss of or damage or injury to any equipment as referred to in this Agreement or other personal property belonging to Contractor or any personnel of Contractor while in any area of the building; nor shall "Owner" OR "Owner's Representative", its parent, subsidiaries and/or affiliates be liable for any injury suffered by any personnel of Contractor while on or in the Owner's property. Personnel of Contractor shall make all necessary arrangements for the safety and security of such equipment and other personal property at all times.

1.36 AGREEMENT DESIGN

- A. It is agreed that this Agreement and any attachment and/or exhibits are contractual in nature and voluntarily entered into by both Parties as their free act and deed, acting in their individual judgment without reliance upon any statement or representation of the other party. This Agreement, any attachments and exhibits constitute the entire understanding, oral or written, between the Parties, and supersedes any and all prior discussions and/or agreement between the Parties. The parties agree that any alteration to any exhibits, attachments or addenda noted therein or herein, and attached hereto shall be null and void, unless made in writing by mutual agreement of Customer and Contractor. The Parties agree to execute whatever additional documents are deemed reasonably necessary to effectuate this transaction.
- B. Both parties have participated in the preparation of this Agreement and have been afforded the opportunity to have this Agreement reviewed by legal counsel and/or other consultants of their choice. It is agreed that the normal rule of construction against the drafter shall not apply to the provisions of this Agreement.

1.37 SEVERABILITY AND REFORMATION

- A. This Agreement is binding upon the Parties, their respective successors, assigns and legal representatives. If a Court, having competent jurisdiction, determines that one or more of the provisions is invalid or unenforceable, the Court will have the right to modify same to the minimum extent necessary to make it valid and enforceable, with the rest of this Agreement remaining unaffected by such conclusion or reformation.

1.38 CONTRACT TERMS GOVERNED BY THE STATE OF MINNESOTA

- A. This Contract shall be governed by the laws of the State of Minnesota and applicable Federal statutes (including HUD regulations).

1.39 SURVIVABILITY

- A. The parties agree that it would cause an undetermined amount of damages to the other party if either fails to comply with any terms and conditions governing the handling of each other's confidential and proprietary information, or the representations, warranties and indemnifications agreed to under this Agreement and/or hereunder, all of which shall survive any early termination or expiration of this Agreement, and shall remain in full force and effect for the later of a period of one (1) year from the date of termination or expiration of this Agreement, or the date the information is returned to whoever disclosed such information, after the date of termination or expiration of this Agreement.

1.40 PARTS INVENTORY AND WIRING DIAGRAMS

- A. The Contractor shall maintain an inventory of spare parts at the site of the work for all non-MCE controlled equipment to perform scheduled preventive maintenance procedures and common emergency callback service repairs. Such parts shall include but are not limited

to contacts, coils, solid-state boards, relays, resistors, timing devices, computer devices, interlock safety switch and linkage parts, bottom guides, door closers, fuses, bulbs, guides and an assortment of hardware. A list of this inventory shall be provided to the MPHA annually.

- B. The Contractor shall maintain an inventory of spare parts at the site of the work, or in all servicing mechanics' mobile vans, for MCE controlled equipment to perform scheduled preventive maintenance procedures and common emergency call-back service repairs. Such parts shall include but are not limited to contacts, coils, solid-state boards, relays, resistors, timing devices, computer devices, interlock safety switch and linkage parts, bottom guides, door closers, fuses, bulbs, guides and an assortment of hardware. A list of this inventory shall be provided to the MPHA annually.
- C. Contractor shall have available major electronic and mechanical assemblies routinely considered by the industry to be replaceable units. Such items shall be available for emergency shipment from the maintaining company or their supplying vendor within 24 hours.
- D. The Contractor shall maintain and continually update wiring diagrams and control schematics to ensure "as built" documents remain on site and the property of the Purchasers.

1.41 MATERIALS AND WORKMANSHIP

- A. All materials and parts shall be new and of the best quality of the kind specified. Installation of such materials shall be accomplished in a neat workmanlike manner. In case the Contractor should receive written notification from the Owner stating the presence of inferior, improper, or unsound materials or workmanship, the Contractor shall, within twenty-four (24) hours proceed to remove such work or materials and make good all other work or materials damaged thereby. If the Owner permits work or materials to remain, the Owner shall be allowed the difference in value or shall, at its election, have the right to have said work or materials repaired or replaced as well as the damage caused thereby, at the expense of the Contractor, at any time during the Contract term; and neither payments made to the Contractor, nor any other acts of the Owner shall be construed as evidence of acceptance and waiver.

1.42 EQUAL OPPORTUNITY

- A. The Contractor shall maintain policies of employment as follows:
 - 1. The Contractor and all Subcontractors shall not discriminate or retaliate against any employee or applicant for employment because of race, religion, color, sex, national origin, or age. The Contractor shall take affirmative action to insure that applicants are employed, and that employees are treated during employment without regard to their race, religion, color, sex, national origin, or age. 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 setting forth the policies of non-discrimination.

2. The Contractor and all Subcontractors shall, in all solicitations or advertisements for employees placed by them or on their behalf, state that all qualified applicants will receive consideration for employment without regard to race, religion, color, sex, national origin, or age.

B. EEO EMPLOYMENT PRACTICES AND COMPLIANCE

1. The Parties shall comply with the basic tenants of the Equal Employment Opportunity Requirements of Executive Order 11246, as amended by Executive Order 11375, Title VII of the Civil Rights Restoration Act of 1987, various state Fair Employment Practices Acts, and any other federal, state or local laws or ordinances pertaining to equal employment opportunity, and that they will not discriminate against any employee or applicant for employment on the basis of race, color, religion, disability, age, sex, national origin or ancestry in matters pertaining to recruitment, hiring, training, upgrading, transfer, compensation or termination. In addition, Contractor agrees to indemnify and hold harmless Owner, its parent, affiliates, employees, agents, representatives, and any of its or their officers, directors, employees, agents, successors, or assigns, harmless from all loss, cost or expense, including reasonable attorneys' fees for any violation by Contractor, its employees, agents, representatives, or assigns of the rules and regulations set forth and enforced by the Immigration and Naturalization Services pursuant to the Immigration and Nationality Act, as well as the Illegal Immigration Reform and Immigrant Responsibility Act which obligation to indemnify shall survive the expiration or termination of this Agreement.
2. Contractor shall maintain comprehensive records of all services performed under this Agreement. These records will be available for inspection by Purchaser at any time during regular business hours and upon 48 hours written notice.

1.43 PROTECTION OF WORK AND PROPERTY

- A. The Contractor shall continuously maintain adequate protection of all his work from damage and shall protect the Owner's property from injury or loss arising out of this contract. The Contractor shall make good any such damages, injury or loss, except such as may be directly caused by agents or employees of the Owner. The Contractor shall provide all barricades required to protect open hoistways or shafts per OSHA regulations. Such protection shall include any necessary guards or other barricades for employee protections during and after the maintenance procedure.

1.44 REPRESENTATION

- A. Contractor represents that it will (i) perform elevator maintenance services under this Agreement in accordance with acceptable industry professional and ethical standards, (ii) not proceed with performance of various aspects of the Services, unless pre-authorized ("Pre-approved Services") by the Purchaser's or Purchaser's Designee at the property, (iii) conduct any handling of Purchaser's Confidential Information in accordance with acceptable industry professional and ethical standards, (iv) not represent to any third party that it has authority to sign, endorse or represent a contractual relationship with or in Purchaser's name, or enter into any agreement on behalf of Purchaser in connection herewith (unless expressly pre-authorized in writing by

Purchaser), (v) safeguard the physical security of Purchaser's Confidential Information if it has access to or possession of such information, (vi) ensure that only "Authorized Representatives" of this Agreement, will have access to any of Purchaser's Confidential Information while rendering the Services, and that it will not be copied, or disseminated to anyone other than the Authorized Representative, and (vii) ensure that all of its employees, representatives, agents or assigns will not solicit any of Purchaser's employees for any purpose. The Parties agree that any alteration to any of the Addenda or Exhibits hereto shall be null and void, unless made in writing by mutual consent of the Parties. The obligations of Contractor set forth herein shall remain in full force and effect for the later of a period of one (1) year from the date of termination or expiration of this Agreement, or the date the Confidential Information is returned to whomever disclosed such information, after the date of termination or expiration of this Agreement.

PART 2 - PRODUCTS AND SERVICES

2.1 SCHEDULED PREVENTIVE MAINTENANCE LABOR

- A. Contractor shall provide scheduled systematic examinations, adjustments, cleaning and lubrication of all machinery, machinery spaces, hoistways and pits. The Contractor shall include a specified minimum number of hours per quarter per unit that is to be dedicated to routine preventive maintenance. The required frequency for the scheduled systematic examinations and the specified minimum hours for routine preventive maintenance are as specified in this contract. Hours assigned to meeting the specified minimum hours for routine preventive maintenance shall not include callback or emergency/unscheduled repair hours. Hours performed on routine preventive maintenance that coincides with a callback or emergency/unscheduled repair may be assigned to meeting the specified minimum hours. Liquidated damages for failure to provide the specified minimum hours per month of routine preventive maintenance are as provided in Minimum Hour Guarantee.
- B. Minimum maintenance hours shall be based on the following minimum staffing requirements:
1. One (1) dedicated full-time Service Mechanic assigned exclusively to this contract.
 2. Additional Service Mechanic(s)/Apprentice(s) as required fulfilling the preventive maintenance requirements.
 3. Additional labor as needed to fulfill contract requirements for emergency callback services, inspection and testing services, repair and/or direct replacement component renewal procedures.
- C. Contractor shall make every effort to contact maintenance team leader before performing routine preventative maintenance. List of contacts will be provided by MPHA.
- D. Contractor shall schedule routine preventative maintenance at the following locations:
1. Main Office – 1001 Washington Avenue
 2. Amp 3 – 901 4th Avenue North
 3. AMP 5- 2533 South 1st Ave.

Note: Any property where multiple elevators exist and one (1) elevator is out of service, routine preventative maintenance for any functioning elevators shall be scheduled in advance.

2.2 LUBRICATION

- A. Lubricate as often as and in the manner specified by said manufacturer all of those mechanical parts, recommended to be lubricated by the original manufacturer of the elevator equipment. Hoist ropes shall be lubricated as often as and, in the manner specified by the hoist rope manufacturer.
- B. Where none currently exist, or existing devices are inoperable, automatic hoist cable lubrication devices shall be installed all traction elevators within ninety (90) days of contract commencement. The type of lubrication device shall be approved by the Owners Representative.

2.3 CLEANING

- A. The Contractor shall, during the course of all examinations, remove and discard immediately all accumulated dirt and debris from the machine room(s), car top(s) and pit area(s) of the elevators. Contractor shall thoroughly clean down all elevator equipment within the hoistways of accumulated dirt, grease, dust and debris thirty (30) days prior to the annual contract anniversary date. The Contractor shall clean hoist ropes as often necessary to maintain traction characteristics and allow for proper inspection.

2.4 PAINTING

- A. The Contractor shall keep the exterior of the machinery and any other parts of the equipment subject to rust properly painted, identified and presentable at all times. The machine room and pit floor and storage areas located in the elevator machine rooms shall be painted with a good quality deck enamel prior to each two (2) year anniversary date of this contract or more often, if necessary, to maintain a well-maintained appearance. All paint applied shall be safe for the environment and non-toxic.
- B. The motor and motor generator windings and armatures are to be cleaned periodically and painted with insulating varnish.

2.5 INSPECTIONS

- A. The Contractor shall provide annual Efficiency and Maintenance Survey Inspections for all units. These inspections shall include a report with recommendations and shall be performed by a Contractor-trained, salaried management employee. The dedicated technician or other field personnel are not allowed to perform these inspections. Personnel performing Efficiency and Maintenance Surveys must enter the date of the survey in the "on-site" MCP. This date shall also be referenced within the required report for the respective facility.
- B. The results of these inspections shall be summarized with appropriate backup material in an annual report to the Owner by the end of the month following the anniversary date of the contract. The Owner and/or the Owner's Independent Consultant shall meet with Contractor to review the report to validate compliance with Contract performance criteria. This report shall also include the fourth quarter report required under Section 1.12 and the following performance parameters and summary data for each vertical transportation unit as appropriate:

1. Unit speed up and OEM designed speed
2. Unit speed down and OEM designed speed
3. Door open speed and OEM designed speed
4. Door close speed normal and code parameter
5. Door close speed reduced (nudging) and code parameter
6. Door closing torque and code parameter
7. Door dwell time – car call and ADA parameter
8. Door dwell time – hall call and ADA parameter
9. Leveling accuracy summary and OEM designed parameter
10. Date of the last annual / five-year safety test completed, including escalators
11. Date of last testing of the Emergency light/alarm systems.
12. Date of last testing and summary results of the emergency communication system.
13. Date of last testing and summary results of the Fireman’s Service Phase 1 and 2 systems
14. Date of last testing of the emergency power/standby systems
15. Dates and summary results of the preceding twelve (12) months communication and fire recall system tests
16. Annualized Callback rate by common control group from the preceding twelve (12) months with backup detail
17. Dedicated maintenance hours for the preceding twelve (12) months by unit

C. Purchaser/Owner reserves the right to make such inspections and tests whenever it deems necessary or appropriate to ascertain that the requirements of this Agreement are being fulfilled. Any deficiencies noted by Purchaser shall be promptly corrected at Contractor’s expense. If Contractor fails to perform elevator maintenance services pursuant to this Agreement in a diligent and satisfactory manner, Purchaser may, after ten (10) working days written notice to Contractor, perform or cause to be performed all or any part of the work required. Contractor shall reimburse Purchaser for any expense incurred therefore, or at Purchaser’s election may deduct the amount from any sum owing Contractor.

D. Upon request the Contractor shall accompany the Owner or the Owner’s Independent Consultant on inspections to evaluate contract compliance.

E. Consultant re-inspection fees to confirm satisfactory completion of deficiencies other than those scheduled to be performed as a part of routine maintenance within three (3) months of the initial inspection shall be reimbursed to the Owner by the Contractor. The Owner shall withhold the re-inspection fees from the Contractor’s monthly billing.

F. The Contractor shall be responsible for yearly Consultant inspection and re-inspection fee(s) for any building that is identified in the annual summary reports as having an average annualized callback rate that exceeds the guaranteed rate by more than twenty-five percent (25%).

2.6 TESTING

A. The Contractor shall conduct all testing procedures in accordance with the applicable Laws, regulations and ordinances, and/or ASME A17.1 standards at intervals specified. Contractor shall abide by all laws, codes, rules, and regulations and ordinances set forth by the appropriate authorities having jurisdiction over the systems where the services under this Agreement are being

performed. Any fines incurred for failure to complete required testing or for filing irregularities will be paid by the Contractor.

1. The Contractor shall act as the Owner's agent for conducting or assisting in the conducting of all tests and inspections required for the equipment covered by this contract.
2. All associated filing procedures per the governing authority shall be completed and executed by the Contractor including payment of all associated fees or other charges.
3. Confirmation of all tests and forms filed on behalf of the Owner shall be forwarded to the Owner's Representative within five (5) working days of the procedure.
4. Contractor shall monthly test and log in the Maintenance Control Program (MCP) all emergency communication systems in all elevators and in all machine rooms.
5. Contractor shall utilize a safety test matrix detailing safety testing dates throughout the year for all units included in their portfolio on a per building basis. This matrix shall be updated each quarter and documentation of such activity shall be provided with the required quarterly reports.
6. All testing will need to be coordinated in advance with the MPHA so as to minimize the amount of disruption to the tenants. Full load, Fireman's Service and Emergency Power testing can all be performed during regular working hours with advance notification to the MPHA.

B. Emergency Recall and Emergency Power System Test

1. The Firemen Service System shall be tested monthly, at a time specified by the building management for operation under Phases I and Phase II, when applicable, as defined by code and Local Law. The elevator interior emergency lighting and intercom systems shall be tested at the same time so as not to interfere with normal operations. All tests will be performed on a not-to-interfere basis.
2. Where applicable, the emergency power system shall be tested annually, at a time specified by Building Management, for proper operation. Building Management will advise the Contractor at least one (1) week in advance of required test performance date and time. This work will be performed on a not-to-interfere basis.
 - a. The emergency power testing will be performed in conjunction with the 5-year full load testing when required for all traction elevators as further described herein.
3. Contractor shall submit to the Owner a full description of the test of the Fireman's service, elevator interior emergency lighting, intercom, and emergency power systems, and the results of such tests within ten (10) days of performance.

C. Annual Hydraulic Elevator Relief Valve Setting and System Pressure Test

1. Contractor shall perform an Annual Hydraulic Elevator Relief Valve Setting and System Pressure Test conforming to the requirements contained in the applicable ASME A17.1 Elevator Safety Code on all Hydraulic Elevators covered by this Contract.

D. Annual Electric Traction Elevator No-load Safety Test

1. Contractor shall perform an Annual Electric Traction Elevator No-load Safety Test conforming to the requirements contained in the applicable ASME A17.1 Elevator Safety Code on all Traction Elevators covered by this Contract.

E. Five-Year Full-Load Safety Test

1. Contractor shall perform a Five-Year Full-load Safety Test conforming to the requirements contained in the applicable ASME A17.1 Elevator Safety Code on all Traction Elevators covered by this Contract.
2. Full load testing of the elevators shall be scheduled to coincide with the annual emergency power generator testing so as the largest elevator in any group shall run with a full load while under emergency power.

2.7 CALLBACK SERVICE (24 HOURS, 7 DAYS PER WEEK)

- A. Contractor shall provide emergency call-back service which consists of promptly dispatching qualified employees in response to requests from the Owner or designated representative, by telephone or otherwise, for emergency adjustment or minor repairs on any day of the week, at any hour, day or night. Overtime Call-Back Coverage (OTCB) shall be provided at no charge to the owner for the units identified under the OTCB column on Exhibit B. On multiple unit buildings, OTCB shall be provided on only the elevator designated as necessary for medical emergencies, i.e. the large elevator capable of transporting a medical gurney. On multiple unit buildings where both units are the same size, unit number 1 (one) shall have OTCB coverage. Emergency repairs shall be made within four (4) hours of arrival to restore the equipment to operating order. If repairs cannot be made immediately, the mechanic shall notify the Owner's Representative as to the reason why and provide supplemental information regarding the restoration of services.
- B. If the mechanic cannot restore operation of the elevator after four (4) hours, the contractor must provide additional technical support to expedite restoration of the elevator to normal service. After eight (8) hours cumulative, the assigned mechanic will be relieved of the call to pursue preventative maintenance services elsewhere while the contractor supplied assistance continues until the elevator is restored to normal service.
- C. Contractor shall provide:
 1. Call-back service in response to passenger entrapments shall be provided within one-half (½) hour during regular working hours and within one (1) hour during overtime periods. Response shall be defined as being "on-site" in the previously defined times. Failure to provide the specified response times with regards to entrapments are subject to penalties as detailed in Section 4.07 (B).
 2. Call-back services for out-of-service units shall be provided within one (1) hour during regular working hours (7:00 am through 4:00 pm), and within two (2) hours between 6:00 a.m. and 8:00 a.m. and 4:30 p.m. and 6:30 p.m. Monday through Friday, except holidays.
 3. Call-back services for out-of-service units shall be provided within two (2) hours at all other times not specified above in "A".

2.8 REPAIRS, RENEWALS, AND REPLACEMENTS

- A. Repairs, renewals, and replacements shall be made by the Contractor as soon as scheduled or other examinations reveal the necessity of the same, or when the Customer so advises the Contractor under the terms of this Agreement. It is understood and agreed that repairs, renewals, and replacements shall be made in accordance with high standards of preventive maintenance

practice and that the repair and renewals of parts made shall be equal in design, workmanship, quality, finish fit, adjustment, operation and appearance to the original installation and that replacements shall be new and genuine parts equal to those parts supplied by the manufacturer of the original equipment or its successor, and shall apply to the repair, renewal, or replacement of all mechanical, electronic, and electrical parts, including but not limited to the following:

1. Automatic door systems, power operated door systems and manual door/gate systems complete.
 - a. Power operator and engagement linkages.
 - b. Car door top track and hanger roller assemblies.
 - c. Car door track liners, eccentrics, stops, bumpers and related operating mechanisms for multiple speed or multiple panel doors.
 - d. Car gates, bottom guides, retainers, fire stops, gibs, entrance sills and threshold plates, gate handles and protection guards.
 - e. Electrical safety switches and activation mechanisms, door protective and/or retracting devices, and power door operators.
 - f. Electromechanical safety interlock assemblies, related operating mechanisms, clutch or other master system engaging devices, linkages, zoned locking devices, and self-closing devices.
2. Car frame, platform, and car safety devices complete.
 - a. Crosshead, stiles, hitch plates, tie rods, supports and related structures.
 - b. Car roller guides, shoes, stands, spindles, gibs, rollers and tensioning devices.
 - c. Sub-platform, under car platform fireproofing, car sills with support cradles, load weighing devices, top/side exit access operating/safety hardware and electrical switches.
 - d. Car fans, blowers and cab ventilation systems.
3. Hoisting machinery, and rotating power drives with mounting supports and beams, raised platforms and weighted foundations and structures complete.
 - a. Geared traction and winding drum units, gearless traction and related systems complete.
 - b. Worms, gears, shafts, couplings, drive sheaves, deflector sheaves, 2:1 sheaves, bearings, support/mounting apparatus, brake assembly, rotating elements and all associated castings, guards, retainers and hardware.
 - c. Integral and free-standing brake units, drums, discs, pulleys, shoes, linings, pads, pins, sleeves, plungers, coils, caps, adjustment devices and hardware complete.
 - d. AC and DC motors, motor generators, rotating regulators and exciters; armatures, field coils, pole pieces, interpoles, commutators, brush riggings, brush holders, carbon brushes, stator windings, fan or other ventilation mechanisms, bearings, bushings, shafts, caps, packings, seals, junction boxes, leads, connectors and related wiring.
4. Controls, selectors, power drives, encoding devices with related wiring, conduit and circuitry complete.

- a. Relays, contactors, switches, capacitors, resistors, fuses, circuit breakers, overloads, power supplies, regulators, tach generators, arc shields, shunts, holders and hardware.
 - b. Circuit boards, transmitters, encoders, transformers, rectifiers, transistors, solid state switching devices, insulators, timing devices, suppressors, and computer apparatus.
 - c. Filters, fans, blowers, wiring, studs, terminal blocks, plug connectors, C.R.T.'s or other diagnostic devices, keyboards and printers.
 - d. Cabinets, isolation transformers, chokes, diagnostic tools, status indicators, solid state and hard wire circuitry.
5. Car and counterweight safety systems.
- a. Overspeed governors and electromechanical safety devices, wire ropes and tensioning devices with related hitch and connection apparatus complete.
 - b. Car and counterweight safety devices, drums, rods, linkages, clamps and hardware.
6. Hoistway and pit equipment.
- a. Guide rails, fishplates, brackets, inserts and related hardware to include jack bolts or other special mechanisms for mounting and alignment.
 - b. Wire ropes, chains and cables used for suspension, compensation, safety and selector encoding with related hitch and connection hardware complete.
 - c. Corridor entrance top track and hanger rollers, toe guards, fascias, dust covers, sills, stops, bumpers, eccentrics, retainers, and bottom guides.
 - d. Overhead machine room, secondary and 2:1 wire rope sheaves, shafts, bearings, bushing, seals, mounting supports, lubrication devices, guards and hardware complete.
 - e. Electrical wiring and conduit, electrical traveling cables, electrical limits, slow-downs, activating cams, switches, vanes, inductors, tapes, readers, leveling and encoding systems complete with all related hardware and wiring.
 - f. Compensation sheaves, shafts, frames, guides, switches, rollers, cams, guards, "S" hooks, guidance systems and all related hardware.
 - g. Counterweight assemblies, guides, rollers, stands, strike plates, safeties and hitch devices.
 - h. Car and counterweight buffers, stands, strikes, blocking, platforms, extension devices, mounting hardware and appurtenances.
 - i. Pit safety switches, cable tensioning devices, access ladders, light switches, lighting assemblies, bulbs and guards.
7. Operating and signal fixtures with electrical wiring.
- a. Car operating panels, push buttons, stop switches, audible signals, keyed or other control switches, visual signals, jewels and indicators with electrical wiring.
 - b. Car position indicators, riding lanterns, signal annunciators, visual and audible signals complete.
 - c. Corridor push button stations, hall lanterns, hall position indicators, keyed switches, access controls, electrical wiring and traveling cables complete.
 - d. Emergency lighting systems, emergency communication devices, and signal systems complete.

- e. Corridor and lobby fixtures with remote controls and operational monitoring devices, starter panels, emergency power selectors, telltale panels, location indicators, security controls and monitors.
 - 8. Hydraulic systems' components, including but not limited to, tanks, valves, pump, cylinder head, above ground piping, hoses, fittings including shutoff valves, gauges, seals, O-Rings, filters, screens, packings, belts, recovery devices overflow devices, rescuator or other emergency operating and signal systems, above grade cylinder and plunger assemblies complete, mufflers, heaters and shut-off valves.
 - 9. The Contractor shall repair and/or replace all electrical traveling cables, wiring and conductors extending to the controls from main line switch in the Machine Room and outlets in the hoistways.
 - 10. The Contractor shall be responsible for relamping all lighting fixtures in the pit, machine room, and hoistway (excluding cab lighting) as required. If cab relamping requires access from the car top to do so, then the Contractor will be required to relamp these devices. The Owner is to provide any lighting elements required.
 - 11. The following items of equipment are excluded: Main line power switches and fuses, car enclosure, car doors, hoistway enclosures, hoistway doors and door frames, buried hydraulic piping, cylinder and conventional below grade plunger assemblies.
- B. All parts considered billable per this agreement are limited to the Contractor's actual costs plus a ten percent (10%) markup.
 - C. During any unforeseen event i.e., water damage, Contractor must include Consultant in all site visits and meetings and every effort should be made to include AHJ. Any list developed by the QEI certified representative of the elevator contractor shall be approved by the consultant prior to submittal to the AHJ.

2.9 RIGHT TO MONITOR CONTRACTOR SERVICE AND PERSONNEL

- A. In addition to the Contractor's management and supervision of services specified herein, the Owner shall retain the right to monitor the actions of the Contractor and services rendered.
- B. The Owner may employ direct labor for management supervision or indirect outside consultants, inspectors, engineers or other qualified personnel to monitor the maintenance services provided by the Contractor with the understanding that such actions do not limit the Contractor's responsibilities for management of services or supervision of personnel.
- C. When conditions warrant, in the opinion of the "Owner" OR "Owner's Representative", the Contractor shall provide the necessary labor and/or materials, at no additional cost, to assist the "Owner" OR "Owner's Representative" to evaluate the services rendered, work performed, and equipment conditions.
- D. There shall be no extra charge to the Owner for normal coordination of services, scheduling procedures, reporting requirements, or other service management and supervision mandated under the terms of this Contract to include assistance labor as specified above when assigned personnel are removed from normal duties without replacement by additional personnel for such assistance to the Owner..

- E. In the event the Contractor changes assigned management or supervisory personnel, the Owner shall retain the right to interview and evaluate all new personnel assigned for direct or indirect management and supervision of this Contract work.
- F. In the event the Contractor union affiliated personnel fail to perform their duties satisfactory to the Owner or display an attitude that is not conducive to good relationships or proper servicing of the elevator systems, the Owner may request a position reassignment based on submission of substantial evidence that such Contractor employee is not serving the best interests of the building and/or the Contractor in performing services specified herein. The Contractor shall honor said request within twenty-four (24) hours of notification and provide labor satisfactory to the Owner.
- G. The Owner reserves the right to purchase related vertical transportation system services, attachments or other appurtenances not covered under the terms of this Contract from other than the Maintenance Contractor. The Contractor shall cooperate and assist the Owner in coordination of such projects or acts to insure safe and adequate vertical transportation is provided. When conditions warrant, in the opinion of the Owner, the Contractor shall provide technical assistance to the Owner upon request.

2.10 CONFIDENTIALITY

- A. The Owner may provide information to enable Contractor to render services hereunder, or Contractor may learn information about property or develop such information from Owner. Contractors agrees:
- B. To treat, and to obligate Contractor's employees, subcontractors, and suppliers to treat as confidential all such information whether or not identified by Owner as confidential.
- C. Not to disclose and such information or make available any reports, recommendations and/or conclusions which Contractor may make on behalf of Owner to any person, firm or corporation or use the same in any manner, whatsoever, without first obtaining Owner's written approval, except to the extent necessary in connection with performing services or when required by law.
- D. Contractor shall not, in the course of performance of this Agreement, or thereafter, use or permit the use of Owner's name or the name of any affiliate of Owner, or the name, address or any picture or likeness of or reference to the property in any advertising, promotional or other materials prepared by or on behalf of Contractor without the prior written approval of Owner.

2.11 SECURITY

- A. Contractor and Contractor's personnel shall comply with all security regulations and requirements of Owner and Owner's tenants.
- B. Contractor and Contractor's personnel shall submit to security background checks as required.

2.12 SCHEDULE SERVICE PROCEDURES

- A. Maintenance requirements, in addition to scheduled and emergency repairs, renewals and testing, shall include but are not limited to:

1. Examination of wire ropes and/or coated steel belts to maintain proper tensioning and legal bottom clearances on a monthly basis for shortening and adjusting ropes as required and performance of all re-shackling procedures per ASME A17.1 and/or ASME A17.6 standards and local laws in conjunction with maintenance of related slack cable devices, machine limits or other safety equipment.
2. Examination, repair, and replacement of all electrical wiring, traveling cables, conduits, connections, and related apparatus extending from the main line power supply switch in the machine/control room or other power supplies in hoistways.
3. Maintenance of pit, hoistway, and machine/control room lighting to include re-lamping, wiring, and switch controls.
4. Cleaning of all hoist ropes as often as necessary to maintain traction characteristics and allow for proper inspection.
5. Lubricating hoist ropes as often as and in the manner specified by the hoist rope manufacturer.
6. Semi-annual testing and documentation of all motor fields, generator fields and armatures electrical resistances when referenced to a mechanical ground. Repairs or replacement shall be scheduled whenever any equipment tested indicates a resistance of less than 200K ohms above referenced ground.
7. Re-lamping signals, as required, during regular examinations. Whenever possible, all replacement indicator lamps shall be the "LED" type.
8. Removing only one (1) elevator in a building at a time from service for performing routine maintenance.

B. Monthly Firemen's Recall Service

1. Monthly Firemen's Recall Service Tests following the ASME Code A17.1/A17.2 requirements must be performed monthly and test logs kept current and stored in an accessible location in the elevator machine/control room / space, and per the requirements of the Local AHJ.

PART 3 - EXECUTION AND SUPPLEMENTAL REQUIREMENTS

3.1 PERFORMANCE TIMES, LEVELING AND CONTRACT SPEED

- A. The control system shall be maintained to provide smooth acceleration and retardation. Contractor must maintain elevators in accordance with the original equipment manufacturer's (O.E.M.) design performance specifications (including floor-to-floor times, door timing, rated speed, group supervisory system, etc.). The door close pressure must never exceed thirty (30) foot-pounds. The following performance schedule shall be adhered to:

Traction / Hydraulic Performance Criteria	
PARAMETER	Microprocessor Control
CONTRACT SPEED	± 2%
LEVELING ACCURACY	within ¼"
DOOR OPEN SPEED IN SECONDS	2x close speed
DOOR CLOSE SPEED IN SECONDS	code + 10%
DOOR CLOSE SPEED NUDGING IN SECONDS	code + 10%
DOOR NUDGING ACTIVATION IN SECONDS	30 – 60
DOOR DWELL – CAR CALL IN SECONDS (ADA COMPLIANT)	3.0 – 4.0
DOOR DWELL – HALL CALL IN SECONDS (ADA Compliant)	5.0 – 6.0
PERFORMANCE TIME IN SECONDS (12' floor height)	350 fpm / 9 – 11
RIDE QUALITY	30 milli/g - traction 40 milli/g - hydraulic
SOUND QUALITY (during door operation, with fan running)	67 dbas - traction 70 dbas - hydraulic

The individual performance of similar elevators shall be the same.

3.2 SAFETY AND ENVIRONMENTAL

- A. The Contractor is required to provide its employees with all legally required safety training prior to allowing the employees to work in any of the Owner's facilities. Contractor shall provide a copy of applicable safety training records to the Owner upon request.
- B. Contractor must properly dispose of all waste material generated in servicing the equipment covered by this contract. Waste materials consist of lubricants, cleaning materials, paints, absorbents and any other material brought on site by the Contractor that is not part of the fixed equipment. Contractor shall be responsible for all environmental spills and/or waste disposal caused by incorrect work procedures and/or Contractor negligence.
- C. Contractor shall provide, prior to starting work under this agreement, Material Safety Data Sheets (MSDS) for all applicable material(s) stored or expected to be used at the maintenance site. When new materials are brought to the maintenance site Material Safety Data Sheets (MSDS) must be provided to the Owner prior to arrival of such material.
- D. The Contractor shall continuously maintain adequate protection of all his work from damage and shall protect the Owner's property from injury or loss arising out of this contract. The Contractor shall make good any such damages, injury or loss, except such as may be directly caused by agents or employees of the Owner. The Contractor shall provide all barricades required to protect open hoistways or shafts per OSHA regulations and shall otherwise be responsible to comply with all OSHA and other lawful safety regulations.

- E. Material storage facilities (cabinets including flammable storage cabinets, waste containers, etc. used to store parts, cleaning materials and lubricants) shall be provided by the Contractor, and shall comply with all federal, state and local laws and codes.

3.3 BUILDING WORK RULES AND CONDITIONS

- A. If Contractor's and/or subcontractors' work in performing the services described herein disturbs Property tenants as determined solely by the Owner, Contractor shall cease work immediately and reschedule for a time acceptable to the Owner.
- B. Contractor and/or its subcontractors shall coordinate with the Owner prior to shutting off or testing any of the building's electrical, plumbing, mechanical life safety or energy management systems. Under no circumstances will Contractor and/or its subcontractors disturb these systems without the express permission and written authorization of the Owner.
- C. Contractor employees, agents, and subcontractors shall submit to a background check by Owner or Owner authorized vendor. Owner shall determine appropriate level of background investigation for Contractor employees, agents, and subcontractors.
- D. Contractor employees, agents, and subcontractors shall wear full work uniforms with company identification and the individuals name prominently displayed.
- E. Contractor employees, agents, and subcontractors shall comply with Owner's "Key and/or Access Card policy.
- F. Contractor shall immediately report to the Owner any and all damage caused by its employees, agents, or subcontractors and shall reimburse the Owner for the cost of repairs within ten (10) days from receipt of invoice. In the event Contractor fails to report such incidents and the Owner determines in its sole opinion, based on inspection of the site, that damage was caused by Contractor, Contractor shall likewise reimburse the Owner for the cost of repairs within ten (10) days from receipt of invoice.
- G. Contractor shall post in the building lobby(s) a notice of any scheduled elevator repair(s) that will exceed four (4) hours in duration forty-eight (48) hours prior to the start of the repair(s).
- H. The Contractor's dedicated route mechanic shall be equipped with a digital camera to be utilized to document incidents relating to vandalism or abuse. Photographs of such incidents shall accompany the related invoice for payment due to vandalism or abuse.

3.4 MEETINGS

- A. Contractors' personnel shall meet with the Purchasers' Representative quarterly to review the reports submitted under Section 1.12, the contractor's compliance with the minimum monthly maintenance hour provision of the specification and any other contract related issues deemed appropriate by the Purchasers' Representative. Each fourth quarter meeting will also include a

review of the reports submitted under Section 2.05. Contractors' personnel shall also be required to meet with the Purchasers' Representative to resolve any contract-related issues that arise during the administration of this agreement on an as needed basis.

- B. The contractor shall attend monthly or at any time during the term of this Contract, upon written request of the Owner's Representative, call-back reduction meetings. Contractor shall provide reports including analytical data and charts to facilitate review of callbacks at these meetings.

3.5 NON-CONTRACTUAL CORRECTIVE ACTION NOTIFICATION TO OWNER

- A. When, in the opinion of the Contractor, corrective action is needed, but considered within the terms of this contract, to be the responsibility of the Owner rather than the Contractor, a written report detailing the nature of such action shall be promptly delivered to the Owner for further action (promptly is defined as within ten (10) working days of becoming aware of the need for corrective action). If such corrective action is considered to be needed on an emergency basis, that is, necessary to maintain an elevator in service or correct a safety related problem notification of the nature of such corrective action shall be immediately provided by telephone, facsimile and e-mail to the Owner's Representative.

3.6 INFORMATION LIBRARY REQUIREMENTS

- A. The Contractor shall have and maintain, for the duration of this agreement, a reference library of information containing, but not limited to, the applicable and current ANSI/ASME A17.1 and A17.3 Safety Code for Elevators and Escalators, current ANSI/ASME A17.2 Inspector's Manual, manufacturer's lubrication specifications and schedules, equipment schematics (motion and logic), parts and assembly list and other basic information needed to properly test, adjust and maintain the equipment covered by this agreement. If technical documentation unique to the Owner's installation is not available from the Owner, the Owner shall assist the Contractor in obtaining the information.

3.7 CHANGES IN SCOPE

- A. The Owner may at any time, by written order, make changes within the general scope of this contract in the work and service to be performed. If any such cases cause an increase or decrease in the Contractor's cost of, or the time required for, the performance of this agreement, an equitable adjustment shall be made, and the contract modified in writing accordingly. If the Owner and Contractor fail to agree upon the adjustment to be made, the Owner reserves the right to solicit bids from other vendors for the performance of the additional work.
- B. When the Owner removes one or more elevators named in this contract from service in order to perform work on such elevators that is outside the scope of this contract, the monthly payments due the Contractor and the minimum maintenance hours required to be provided by the Contractor will be reduced accordingly. The Contractor shall be notified, in writing, by letter or contract change order, at least three (3) full working days in advance of the elevator(s) being removed from, or returned to, service. If the elevator(s) is to be removed from service for thirty (30) consecutive calendar days or less, the Owner will negotiate an equitable adjustment with the Contractor and make the necessary adjustments on the monthly invoice authorizing payment. If the elevator(s) is to be removed from service for more than thirty (30) consecutive calendar days, the Owner will issue a modification to the contract and negotiate and equitable adjustment in the contract price in accordance with the changes clause.

The period for reducing payments will begin on the effective date specified in the notice and will continue through the day before the elevator(s) is returned to covered service.

PART 4 - PERFORMANCE, GUARANTEES, AND PENALTIES

4.1 PERFORMANCE BOND, LABOR AND MATERIAL PAYMENT BOND

- A. At Purchaser's option, the Contractor may be asked for a bond covering the faithful performance of the contract and the payment of all obligations arising thereunder. Such Bonds, in the absence of notice hereafter provided, shall be obtained by the Contractor and the premium for such Bonds will be paid by the Owner. The Contractor agrees to furnish to the Owner's authorized insurance representative, complete and detailed financial information required for the issuance of such Bonds, also, a completed and signed Application for Bond, without deletions, on Surety's form, acceptable to the Owner. The Contractor also agrees to comply with any other reasonable requests of the surety so that Bonds may be issued. All information submitted by the Contractor shall be considered privileged information and therefore kept as confidential as possible. This information will be used only in connection with securing said bonds for this project.
- B. Upon notice to the Contractor, prior to the initial signing of the Agreement, or any subsequent annual renewal, the Purchaser shall have the right to require the Contractor to obtain the aforementioned bonding at prevailing rates, with surety acceptable to the Purchaser.

4.2 RELIABILITY GUARANTEE

- A. Contractor shall correct any system malfunction which requires the removal of a unit from normal operating service within forty-eight (48) hours of the initial failure for hydraulic elevators and seventy-two (72) hours of the initial failure for traction elevators excluding weekends and holidays.
- B. If the unit is not returned to service within the specified time allotment, the Contractor shall reduce the subsequent monthly maintenance charge for the unit by amount equal to fifty percent (50%) of the total monthly unit price for each twenty-four (24) hour period the unit is out of service from the date of system malfunction. Any overtime required beyond the required timeline established in A above shall be performed at no cost to the Owner.
 - 1. However, Contractor shall not be penalized for pre-approved and scheduled maintenance repairs, tests or other conditions necessitating unscheduled major work procedures, resulting from a cause excluded by any other provision of this Agreement, or repairs to items not covered under this Agreement.

4.3 MINIMUM HOUR GUARANTEE

- A. Contractor's failure to provide the specified monthly minimum hours for routine preventative maintenance on an averaged quarterly basis shall result in the Contractor providing a refund to the Owner for the unexpended hours at the "Straight Time Rate Hourly Selling Price" or overtime rate, if appropriate, for Maintenance Mechanics listed in Exhibit A, price adjusted as appropriate. The amount to be refunded shall be deducted from the monthly maintenance fee in the month(s) following each quarterly anniversary date of the contract or refunded by check at the option of the Owner. The amount shall be determined as part of the quarterly review of reports. If the Contractor fails to provide the required monthly minimum hours for routine preventative maintenance for two (2) consecutive quarters, the Owner has the right to immediately cancel the Contract or to pursue any other available remedy.

4.4 REPORTING GUARANTEE

- A. Failure to provide Quarterly, Annual or Owner requested Reports within the time frame specified in Section 2.05 will result in an automatic reduction of the total contract price of ten percent (10%) for a three (3) month period for reports required quarterly and ten percent (10%) for a year for reports required annually as damages. Damages will be cumulative year to year. If the quarterly reporting requirements are missed for two consecutive periods, the Owner has the option to immediately cancel the contract or to pursue any other available remedy.
- B. Failure to provide Efficiency and Maintenance Survey Inspection Reports performed by Contractors management personnel within the time frame specified in Section 2.05 will result in an automatic reduction of the total contract price of ten percent (10%) for a one (1) year period as damages. The dedicated technician or other field personnel are not allowed to perform these surveys. Damages will be cumulative year to year. If the yearly reporting requirements are missed for two (2) consecutive periods, the Owner has the option to immediately cancel the contract or to pursue any other available remedy.
- C. Failure to provide and maintain a Code Compliant Maintenance Control and Recordkeeping system as specified in Section 2 will result in an automatic reduction of the Contract price of ten percent (10%) for a one (1) year period as liquidated damages. Liquidated damages will be cumulative year to year. If the yearly recordkeeping requirements are missed for two (2) consecutive periods, the Owner has the option to immediately cancel the Contract or to pursue any other available remedy.

4.5 RFP DATA GUARANTEE

- A. The Contractor warrants that all data supplied as part of the RFP qualification process will remain valid for the duration of this contract. If any changes occur relative to the information provided as part of the RFP process the Owner has the right to immediately cancel the Contract or to pursue any other available remedy.

4.6 PERFORMANCE GUARANTEE

- A. Contractor's failure to comply with the performance criteria specified in section 3.01 shall subject the Contractor to payment of damages as follows:

1. If more than one (1) unit, or any simplex unit, in any bank of elevators fails to meet the performance requirements, the monthly billing for the entire bank of elevators or simplex unit shall be reduced during the next twelve (12) months (until the next annual calculation) by ten percent (10%). The reduction will be cumulative by bank and year; that is, if a reduction is warranted for two/three consecutive years, the monthly fee in the second/third year will be reduced from the previous year's amount by an additional ten percent (10%) per year. If reductions in maintenance pricing due to poor Control System Performance occur for two (2) consecutive years, the Owner has the right to immediately cancel the Contract or to pursue any other available remedy.
2. If more than one (1) unit in any bank of elevators, or any simplex unit, fails to meet the performance requirements and corrections to return the unit to contract compliance within ninety (90) days of notification by the Owner are not completed, the Owner has the right to immediately cancel the Contract or to pursue any other available remedy.

4.7 CALLBACK GUARANTEES

A. Callback Rate

1. Callbacks shall be monitored and reported quarterly on an annualized basis. For measurement purposes callbacks shall be grouped and averaged on an annualized basis by common control group. Callbacks for items not covered by the contract (i.e. vandalism, water or fire damage callbacks that have been billed to the customer and paid by mutual agreement) will not be included in the calculation (running on arrival or no problem found callbacks will be assumed to be problems not identified and fixed and will be included in the calculation).
2. Once a year in the month following the anniversary date of the contract the Contractor and the Owner will review the callback data submitted with the annual Inspection and Evaluation report. If the annualized call-back rate for any grouping exceeds the rate(s) provided on Exhibit B, submitted in the bidding by more than twenty-five (25%), the maintenance fee for each unit in that grouping will be reduced, as monetary damages, during the next twelve (12) months (until the next annual calculation) by ten percent (10%). The reduction will be cumulative by group and year, that is, if a reduction is warranted for two to three (2 to 3) consecutive years, the monthly fee in the second/third year will be reduced from the previous year's amount by an additional ten percent (10%) per year. If reductions in maintenance pricing due to excessive call-backs occur for two (2) consecutive years, the Owner has the right to immediately cancel the Contract or to pursue any other available remedy.

B. Entrapment Callback Response Time Guarantee

1. Contractor's failure to comply with the callback entrapment response times contained in Section 2.07A will result in the contractor paying monetary damages for the applicable callback(s) time, including travel time, at the billing rates listed in Exhibit A, price adjusted as appropriate. These monetary damages will be required for all applicable entrapment callbacks regardless as to their billability under the terms of the contract.

4.8 CONTRACTUAL REQUIREMENT GUARANTEE

- A. The Owner may have the Contractor's work and system performance checked by the Owner or an Independent Consultant to ensure the Contractor is performing in accordance with this Contract. If the Owner or an Independent Consultant determines that the contractual requirements are not being maintained, the Owner may retain the monthly payment to the Contractor until the Owner, or an Independent Consultant verifies that the work performance is back to standard. The Contractor shall pay re-inspection costs incurred by the Owner for an Independent Consultant by deduction from the monthly maintenance fees. If two (2) consecutive inspections by the Owner or an Independent Consultant within one [1] year but more than sixty [60] days apart) indicate that the contractual requirements are not being maintained, the Owner has the right to immediately cancel the Contract or to pursue any other available remedy.

4.9 SYSTEM RESPONSE TIME PERFORMANCE

- A. The group supervisory and individual unit control systems shall be maintained to provide overall satisfactory service levels as designed by the O.E.M.
- B. Upon the request of the Owner, the Contractor shall provide a computerized traffic study with a summary report that at a minimum details hall waiting times by floor and direction of travel. The Contractor shall use a Delta analyzer or similar device.

4.10 MOTOR BURNOUTS

- A. Hoist motor, hydraulic pump motor, hydraulic valve, and hydraulic pump burnouts / failures will cause the Contractor (and subcontractors) to commence around-the-clock repair efforts at no cost to the Owner and will continue until the elevator is placed back into service in all buildings with only one elevator, elevators designated on Exhibit B as Yes – Large Car and for all four (4) elevators at 600 North 18th Avenue. It is expected that for all other elevators covered by this agreement that repairs caused by the type of failures referenced in this section will be performed as quickly as possible during normal working hours.

4.11 TESTING GUARANTEE

- A. Traction Elevators - Failure to complete the code required annual no-load and/or five-year full load safety test(s) within thirty (30) calendar days of the appropriate anniversary date or code compliance date will result in an automatic reduction of the monthly contract price for that elevator of fifty percent (50%) for each thirty (30) day period the test(s) are overdue as liquidated damages if requested by Owner. If the test(s) become overdue, the thirty (30) day grace period is eliminated, and any liquidated damages will be applied from the due day. (Example: test(s) are forty-five [45] days overdue; liquidated damages will be fifty percent [50%] of two [2] months billing.)
- B. Hydraulic Elevators and Platform Lifts - Failure to complete the code required annual no-load pressure test(s) within thirty (30) calendar days of the appropriate anniversary date or code compliance date will result in an automatic reduction of the monthly contract price for

that elevator of fifty percent (50%) for each thirty (30) day period the test(s) are overdue as liquidated damages if requested by Owner. If the test(s) become overdue the thirty (30) day grace period is eliminated and any liquidated damages will be applied from the due day. (Example: test(s) are forty-five [45] days overdue; liquidated damages will be fifty percent [50%] of two [2] months billing.)

4.12 RESTRICTED DOOR OPENING GUARANTEE

- A. If an elevator is furnished with a restricted door opening device and said device is inoperable in a manner or pattern that indicates its ability to function as intended was other than by random failure the monthly contract price for that elevator will be reduced by fifty percent (50%) for each full and/or partial thirty (30) day period the device is inoperative after contractor has been notified as liquidated damages if requested by Owner. (Examples: 1) the device is inoperative, as defined above, for forty-five [45] days; liquidated damages will be fifty percent [50%] of two [2] months billing; 2) the device is inoperative, as defined above, for one [1] day; liquidated damages will be fifty percent [50%] of one [1] months billing). Final determination for why a restricted door opening device is inoperable will be made by the Owner.

END OF SPECIFICATION