

**ON-CALL MAINTENANCE/REPAIR SERVICES AGREEMENT
WITH SMARTRISE ELEVATOR SERVICE INC. FOR
ON-CALL ELEVATOR SERVICES**

THIS ON-CALL MAINTENANCE/REPAIR SERVICES AGREEMENT ("Agreement") is made and entered into as of this 26th day of August, 2025 ("Effective Date"), by and between the CITY OF NEWPORT BEACH, a California municipal corporation and charter city ("City"), and SMARTRISE ELEVATOR SERVICE INC., a California corporation ("Contractor"), whose address is 13523 Larwin Circle, Santa Fe Springs, CA 90670, and is made with reference to the following:

RECITALS

- A. City is a municipal corporation duly organized and validly existing under the laws of the State of California with the power to carry on its business as it is now being conducted under the statutes of the State of California and the Charter of City.
- B. City desires to engage Contractor to perform on-call maintenance and/or repair services for City ("Project").
- C. Contractor possesses the skill, experience, ability, background, certification and knowledge to provide the maintenance and/or repair services described in this Agreement.
- D. Contractor has examined the location of all proposed work, carefully reviewed and evaluated the specifications set forth by City for the Project, is familiar with all conditions relevant to the performance of services, and has committed to perform all work required for the compensation specified in this Agreement.

NOW, THEREFORE, it is mutually agreed by and between the undersigned parties as follows:

1. TERM

The term of this Agreement shall commence on the Effective Date, and shall terminate on August 25, 2030, unless terminated earlier as set forth herein.

2. SERVICES TO BE PERFORMED

2.1 Contractor shall perform the on-call services described in the Scope of Services attached hereto as Exhibit A and incorporated herein by reference ("Services" or "Work"). Upon written request from the Project Administrator as defined herein, Contractor shall provide a letter proposal for Services requested by the City (hereinafter referred to as the "Letter Proposal"). The Letter Proposal shall include the following:

2.1.1 A detailed description of the Services to be provided;

2.1.2 The position of each person to be assigned to perform the Services, and the name of the individuals to be assigned, if available;

2.1.3 The estimated number of hours and cost to complete the Services;
and

2.1.4 The time needed to finish the specific project.

2.2 No Services shall be provided until the Project Administrator has provided written acceptance of the Letter Proposal. Once authorized to proceed, Contractor shall diligently perform the duties in the approved Letter Proposal.

3. TIME OF PERFORMANCE

3.1 Time is of the essence in the performance of Services under this Agreement and Contractor shall perform the Services in accordance with the schedule included in Exhibit A and the Letter Proposal. In the absence of a specific schedule, the Services shall be performed to completion in a diligent and timely manner. The failure by Contractor to strictly adhere to the schedule set forth in Exhibit A and the Letter Proposal, if any, or perform the Services in a diligent and timely manner may result in termination of this Agreement by City.

3.2 Notwithstanding the foregoing, Contractor shall not be responsible for delays due to causes beyond Contractor's reasonable control. However, in the case of any such delay in the Services to be provided for the Project, each party hereby agrees to provide notice within two (2) calendar days of the occurrence causing the delay to the other party so that all delays can be addressed.

3.3 Contractor shall submit all requests for extensions of time for performance in writing to the Project Administrator as defined herein, not later than two (2) calendar days after the start of the condition that purportedly causes a delay. The Project Administrator shall review all such requests and may grant reasonable time extensions for unforeseeable delays that are beyond Contractor's control.

3.4 For all time periods not specifically set forth herein, Contractor shall respond in the most expedient and appropriate manner under the circumstances, by fax, hand-delivery or mail.

4. COMPENSATION TO CONTRACTOR

4.1 City shall pay Contractor for the Services on a time and expense not-to-exceed basis in accordance with the provisions of this Section and the Letter Proposal and the Schedule of Billing Rates attached hereto as Exhibit B and incorporated herein by reference. Except as otherwise provided herein, no rate changes shall be made during the term of this Agreement without the prior written approval of City. Contractor's compensation for all Services performed in accordance with this Agreement, including all reimbursable items, shall not exceed **Three Hundred Thousand Dollars and 00/100 (\$300,000.00)**, without prior written amendment to the Agreement.

4.2 Upon the first anniversary of the Effective Date and upon each anniversary of the Effective Date thereafter, the billing rates set forth in Exhibit B ("Billing Rates") may be adjusted in proportion to changes in the Consumer Price Index, subject to the maximum adjustment set forth below. Such adjustment shall be made by multiplying the

Billing Rates in Exhibit B by a fraction, the numerator of which is the value of the Consumer Price Index for the calendar month three (3) months preceding the calendar month for which such adjustment is to be made, and the denominator of which is the value of the Consumer Price Index for the same calendar month immediately prior to Effective Date. The Consumer Price Index to be used in such calculation is the "Consumer Price Index, All Items, 1982-84=100 for All Urban Consumers (CPI-U)", for the Los Angeles-Riverside-Orange County Metropolitan Area, published by the United States Department of Labor, Bureau of Labor Statistics. If both an official index and one or more unofficial indices are published, the official index shall be used. If said Consumer Price Index is no longer published at the adjustment date, it shall be constructed by conversion tables included in such new index. In no event, however, shall the amount payable under this Agreement be reduced below the Billing Rates in effect immediately preceding such adjustment. The maximum adjustment increase to the Billing Rates, for any year where an adjustment is made pursuant to this Section, shall not exceed the Consumer Price Index or 2.0% of the Billing Rates in effect immediately preceding such adjustment, whichever is less. Contractor shall notify City in writing of any requests for adjustment pursuant to this Section at least thirty (30) days prior to the Effective Date of such adjustment, and provide updated billing rates. Adjusted billing rates shall be approved in writing by City prior to use.

4.3 Contractor shall submit monthly invoices to City describing the Work performed the preceding month. Contractor's bills shall include the name and/or classification of employee who performed the Work, a brief description of the Services performed and/or the specific task in the Scope of Services to which it relates, the date the Services were performed, the number of hours spent on all Work billed on an hourly basis, and a description of any reimbursable expenditures. City shall pay Contractor no later than thirty (30) calendar days after approval of the monthly invoice by City staff.

4.4 City shall reimburse Contractor only for those costs or expenses specifically identified in Exhibit B to this Agreement and the Letter Proposal, or specifically approved in writing in advance by City.

4.5 Contractor shall not receive any compensation for Extra Work performed without the prior written authorization of City. As used herein, "Extra Work" means any Work that is determined by City to be necessary for the proper completion of the Project, but which is not included within the Scope of Services and which the parties did not reasonably anticipate would be necessary at the execution of this Agreement. Compensation for any authorized Extra Work shall be paid in accordance with Exhibit B and the Letter Proposal.

5. PROJECT MANAGER

5.1 Contractor shall designate a Project Manager, who shall coordinate all phases of the Project. This Project Manager shall be available to City at all reasonable times during the Agreement term. Contractor has designated Arthur Gumm to be its Project Manager. Contractor shall not remove or reassign the Project Manager or any personnel listed in Exhibit A or assign any new or replacement personnel to the Project without the prior written consent of City. City's approval shall not be unreasonably withheld with respect to the removal or assignment of non-key personnel.

5.2 Contractor, at the sole discretion of City, shall remove from the Project any of its personnel assigned to the performance of Services upon written request of City. Contractor warrants that it will continuously furnish the necessary personnel to complete the Project on a timely basis as contemplated by this Agreement.

6. ADMINISTRATION

This Agreement will be administered by the Public Works Department. City's Public Works Director or designee shall be the Project Administrator and shall have the authority to act for City under this Agreement. The Project Administrator shall represent City in all matters pertaining to the Services to be rendered pursuant to this Agreement.

7. CITY'S RESPONSIBILITIES

To assist Contractor in the execution of its responsibilities under this Agreement, City agrees to provide access to and upon request of Contractor, one copy of all existing relevant information on file at City. City will provide all such materials in a timely manner so as not to cause delays in Contractor's Work schedule.

8. TYPE AND INSTALLATION OF MATERIALS/STANDARD OF CARE

8.1 Contractor shall use only the standard materials described in Exhibit A in performing Services under this Agreement. Any deviation from the materials described in Exhibit A shall not be installed or utilized unless approved in advance and in writing by the Project Administrator.

8.2 All of the Services shall be performed by Contractor or under Contractor's supervision. Contractor represents that it possesses the personnel required to perform the Services required by this Agreement, and that it will perform all Services in a manner commensurate with community professional standards and with the ordinary degree of skill and care that would be used by other reasonably competent practitioners of the same discipline under similar circumstances. All Services shall be performed by qualified and experienced personnel who are not employed by City. By delivery of completed Work, Contractor certifies that the Work conforms to the requirements of this Agreement, all applicable federal, state and local laws and legally recognized professional standards.

8.3 Contractor represents and warrants to City that it has, shall obtain and shall keep in full force and effect during the term hereof, at its sole cost and expense, all licenses, permits, qualifications, insurance and approvals of whatsoever nature that is legally required of Contractor to practice its profession. Contractor shall maintain a City of Newport Beach business license during the term of this Agreement.

8.4 Contractor shall not be responsible for delay, nor shall Contractor be responsible for damages or be in default or deemed to be in default by reason of strikes, lockouts, accidents, acts of God, or the failure of City to furnish timely information or to approve or disapprove Contractor's Work promptly, or delay or faulty performance by City, contractors, or governmental agencies.

9. RESPONSIBILITY FOR DAMAGES OR INJURY

9.1 City and all officers, employees and representatives thereof shall not be responsible in any manner for any loss or damage to any of the materials or other things used or employed in performing the Project or for injury to or death of any person as a result of Contractor's performance of the Services required hereunder; or for damage to property from any cause arising from the performance of the Project by Contractor, or its subcontractors, or its workers, or anyone employed by either of them.

9.2 Contractor shall be responsible for any liability imposed by law and for injuries to or death of any person or damage to property resulting from defects, obstructions or from any cause arising from Contractor's Work on the Project, or the Work of any subcontractor or supplier selected by Contractor.

9.3 To the fullest extent permitted by law, Contractor shall indemnify, defend and hold harmless City, its City Council, boards and commissions, officers, agents, volunteers, and employees (collectively, the "Indemnified Parties") from and against any and all claims (including, without limitation, claims for bodily injury, death or damage to property), demands, obligations, damages, actions, causes of action, suits, losses, judgments, fines, penalties, liabilities, costs and expenses (including, without limitation, attorneys' fees, disbursements and court costs) of every kind and nature whatsoever (individually, a Claim; collectively, "Claims"), which may arise from or in any manner relate (directly or indirectly) to any breach of the terms and conditions of this Agreement, any Work performed or Services provided under this Agreement including, without limitation, defects in workmanship or materials or Contractor's presence or activities conducted on the Project (including the negligent and/or willful acts, errors and/or omissions of Contractor, its principals, officers, agents, employees, vendors, suppliers, consultants, subcontractors, anyone employed directly or indirectly by any of them or for whose acts they may be liable or any or all of them).

9.4 Notwithstanding the foregoing, nothing herein shall be construed to require Contractor to indemnify the Indemnified Parties from any Claim arising from the sole negligence or willful misconduct of the Indemnified Parties. Nothing in this indemnity shall be construed as authorizing any award of attorneys' fees in any action on or to enforce the terms of this Agreement. This indemnity shall apply to all claims and liability regardless of whether any insurance policies are applicable. The policy limits do not act as a limitation upon the amount of indemnification to be provided by Contractor.

9.5 Contractor shall perform all Work in a manner to minimize public inconvenience and possible hazard, to restore other work areas to their original condition and former usefulness as soon as possible, and to protect public and private property. Contractor shall be liable for any private or public property damaged during the performance of the Work by Contractor or its agents.

9.6 To the extent authorized by law, as much of the money due Contractor under and by virtue of the Agreement as shall be considered necessary by City may be retained by it until disposition has been made of such suits or claims for damages as aforesaid.

9.7 The rights and obligations set forth in this Section shall survive the termination of this Agreement.

10. INDEPENDENT CONTRACTOR

It is understood that City retains Contractor on an independent contractor basis and Contractor is not an agent or employee of City. The manner and means of conducting the Work are under the control of Contractor, except to the extent they are limited by statute, rule or regulation and the expressed terms of this Agreement. No civil service status or other right of employment shall accrue to Contractor or its employees. Nothing in this Agreement shall be deemed to constitute approval for Contractor or any of Contractor's employees or agents, to be the agents or employees of City. Contractor shall have the responsibility for and control over the means of performing the Work, provided that Contractor is in compliance with the terms of this Agreement. Anything in this Agreement that may appear to give City the right to direct Contractor as to the details of the performance of the Work or to exercise a measure of control over Contractor shall mean only that Contractor shall follow the desires of City with respect to the results of the Services.

11. COOPERATION

Contractor agrees to work closely and cooperate fully with City's designated Project Administrator and any other agencies that may have jurisdiction or interest in the Work to be performed. City agrees to cooperate with Contractor on the Project.

12. CITY POLICY

Contractor shall discuss and review all matters relating to policy and Project direction with City's Project Administrator in advance of all critical decision points in order to ensure the Project proceeds in a manner consistent with City goals and policies.

13. PROGRESS

Contractor is responsible for keeping the Project Administrator informed on a regular basis regarding the status and progress of the Project, activities performed and planned, and any meetings that have been scheduled or are desired.

14. INSURANCE

Without limiting Contractor's indemnification of City, and prior to commencement of Work, Contractor shall obtain, provide and maintain at its own expense during the term of this Agreement or for other periods as specified in this Agreement, policies of insurance of the type, amounts, terms and conditions described in the Insurance Requirements attached hereto as Exhibit C, and incorporated herein by reference.

15. BONDING

15.1 For any Letter Proposal accepted by City of over Twenty Five Thousand Dollars and 00/100 (\$25,000.00), Contractor shall obtain, provide and maintain at its own expense during the term of this Agreement: (1) a Labor and Materials Payment Bond in

the amount of one hundred percent (100%) of the total amount to be paid Contractor as set forth in any Letter Proposal accepted by City of over Twenty Five Thousand Dollars and 00/100 (\$25,000.00), and in the form attached hereto as Exhibit D which is incorporated herein by this reference; and (2) a Faithful Performance Bond in the amount of one hundred percent (100%) of the total amount to be paid Contractor as set forth in any Letter Proposal accepted by City of over Twenty Five Thousand Dollars and 00/100 (\$25,000.00), and in the form attached hereto as Exhibit E which is incorporated herein by this reference.

15.2 The Labor and Materials Payment Bond and Faithful Performance Bond shall be issued by an insurance organization or surety (1) currently authorized by the Insurance Commissioner to transact business of insurance in the State of California, (2) listed as an acceptable surety in the latest revision of the Federal Register Circular 570, and (3) assigned a Policyholders' Rating A (or higher) and Financial Size Category Class VII (or larger) in accordance with the latest edition of Best's Key Rating Guide: Property-Casualty.

15.3 Contractor shall deliver, concurrently with City's approval of any Letter Proposal over Twenty Five Thousand Dollars and 00/100 (\$25,000.00), the Labor and Materials Payment Bond and Faithful Performance Bond, a certified copy of the "Certificate of Authority" of the Insurer or Surety issued by the Insurance Commissioner, which authorizes the Insurer or Surety to transact surety insurance in the State of California.

16. PREVAILING WAGES

16.1 Pursuant to the applicable provisions of the Labor Code of the State of California, not less than the general prevailing rate of per diem wages including legal holidays and overtime Work for each craft or type of workman needed to execute the Work contemplated under the Agreement shall be paid to all workmen employed on the Work to be done according to the Agreement by the Contractor and any subcontractor. In accordance with the California Labor Code (Sections 1770 et seq.), the Director of Industrial Relations has ascertained the general prevailing rate of per diem wages in the locality in which the Work is to be performed for each craft, classification, or type of workman or mechanic needed to execute the Agreement. A copy of said determination is available by calling the prevailing wage hotline number (415) 703-4774, and requesting one from the Department of Industrial Relations. The Contractor is required to obtain the wage determinations from the Department of Industrial Relations and post at the job site the prevailing rate or per diem wages. It shall be the obligation of the Contractor or any subcontractor under him/her to comply with all State of California labor laws, rules and regulations and the parties agree that the City shall not be liable for any violation thereof.

16.2 Unless otherwise exempt by law, Contractor warrants that no contractor or subcontractor was listed on the bid proposal for the Services that it is not currently registered and qualified to perform public work. Contractor further warrants that it is currently registered and qualified to perform "public work" pursuant to California Labor Code section 1725.5 or any successor statute thereto and that no contractor or subcontractor will engage in the performance of the Services unless currently registered and qualified to perform public work.

17. PROHIBITION AGAINST ASSIGNMENTS AND TRANSFERS

Except as specifically authorized under this Agreement, the Services to be provided under this Agreement shall not be assigned, transferred contracted or subcontracted out without the prior written approval of City. Any of the following shall be construed as an assignment: The sale, assignment, transfer or other disposition of any of the issued and outstanding capital stock of Contractor, or of the interest of any general partner or joint venturer or syndicate member or cotenant if Contractor is a partnership or joint-venture or syndicate or cotenancy, which shall result in changing the control of Contractor. Control means fifty percent (50%) or more of the voting power or twenty-five percent (25%) or more of the assets of the corporation, partnership or joint-venture.

18. SUBCONTRACTING

The subcontractors authorized by City, if any, to perform Work on this Project are identified in Exhibit A and the Letter Proposal. Contractor shall be fully responsible to City for all acts and omissions of any subcontractor. Nothing in this Agreement shall create any contractual relationship between City and any subcontractor nor shall it create any obligation on the part of City to pay or to see to the payment of any monies due to any such subcontractor other than as otherwise required by law. City is an intended beneficiary of any Work performed by the subcontractor for purposes of establishing a duty of care between the subcontractor and City. Except as specifically authorized herein, the Services to be provided under this Agreement shall not be otherwise assigned, transferred, contracted or subcontracted out without the prior written approval of City.

19. OWNERSHIP OF DOCUMENTS

Each and every report, draft, map, record, plan, document and other writing produced (hereinafter "Documents"), prepared or caused to be prepared by Contractor, its officers, employees, agents and subcontractors, in the course of implementing this Agreement, shall become the exclusive property of City, and City shall have the sole right to use such materials in its discretion without further compensation to Contractor or any other party. Contractor shall, at Contractor's expense, provide such Documents to City upon prior written request.

20. CONFIDENTIALITY

All Documents, including drafts, preliminary drawings or plans, notes and communications that result from the Services in this Agreement, shall be kept confidential unless City expressly authorizes in writing the release of information.

21. RECORDS

Contractor shall keep records and invoices in connection with the Services to be performed under this Agreement. Contractor shall maintain complete and accurate records with respect to the costs incurred under this Agreement and any Services, expenditures and disbursements charged to City, for a minimum period of three (3) years, or for any longer period required by law, from the date of final payment to Contractor under this Agreement. All such records and invoices shall be clearly identifiable. Contractor shall allow a representative of City to examine, audit and make transcripts or

copies of such records and invoices during regular business hours. Contractor shall allow inspection of all Work, data, Documents, proceedings and activities related to the Agreement for a period of three (3) years from the date of final payment to Contractor under this Agreement.

22. WITHHOLDINGS

City may withhold payment to Contractor of any disputed sums until satisfaction of the dispute with respect to such payment. Such withholding shall not be deemed to constitute a failure to pay according to the terms of this Agreement. Contractor shall not discontinue Work as a result of such withholding. Contractor shall have an immediate right to appeal to the City Manager or his/her designee with respect to such disputed sums. Contractor shall be entitled to receive interest on any withheld sums at the rate of return that City earned on its investments during the time period, from the date of withholding of any amounts found to have been improperly withheld.

23. CITY'S RIGHT TO EMPLOY OTHER CONTRACTORS

City reserves the right to employ other contractors in connection with the Project.

24. CONFLICTS OF INTEREST

24.1 Contractor or its employees may be subject to the provisions of the California Political Reform Act of 1974 (the "Act") and/or Government Code §§ 1090 et seq., which (1) require such persons to disclose any financial interest that may foreseeably be materially affected by the Work performed under this Agreement, and (2) prohibit such persons from making, or participating in making, decisions that will foreseeably financially affect such interest.

24.2 If subject to the Act and/or Government Code §§ 1090 et seq., Contractor shall conform to all requirements therein. Failure to do so constitutes a material breach and is grounds for immediate termination of this Agreement by City. Contractor shall indemnify and hold harmless City for any and all claims for damages resulting from Contractor's violation of this Section.

25. NOTICES

25.1 All notices, demands, requests or approvals, including any change in mailing address, to be given under the terms of this Agreement shall be given in writing, and conclusively shall be deemed served when delivered personally, or on the third business day after the deposit thereof in the United States mail, postage prepaid, first-class mail, addressed as hereinafter provided.

25.2 All notices, demands, requests or approvals from Contractor to City shall be addressed to City at:

Attn: Public Works Director
Public Works Department
City of Newport Beach
100 Civic Center Drive

PO Box 1768
Newport Beach, CA 92658

25.3 All notices, demands, requests or approvals from City to Contractor shall be addressed to Contractor at:

Attn: Arthur Gumm
Smartrise Elevator Service Inc.
13523 Larwin Circle
Santa Fe Springs, CA 90670

26. CLAIMS

26.1 Unless a shorter time is specified elsewhere in this Agreement, before making its final request for payment under this Agreement, Contractor shall submit to City, in writing, all claims for compensation under or arising out of this Agreement. Contractor's acceptance of the final payment shall constitute a waiver of all claims for compensation under or arising out of this Agreement except those previously made in writing and identified by Contractor in writing as unsettled at the time of its final request for payment. Contractor and City expressly agree that in addition to any claims filing requirements set forth in the Agreement, Contractor shall be required to file any claim Contractor may have against City in strict conformance with the Government Claims Act (Government Code sections 900 et seq.).

26.2 To the extent that Contractor's claim is a "Claim" as defined in Public Contract Code section 9204 or any successor statute thereto, the Parties agree to follow the dispute resolution process set forth therein. Any part of such "Claim" remaining in dispute after completion of the dispute resolution process provided for in Public Contract Code section 9204 or any successor statute thereto shall be subject to the Government Claims Act requirements requiring Contractor/Consultant to file a claim in strict conformance with the Government Claims Act. To the extent that Contractor's claim is not a "Claim" as defined in Public Contract Code section 9204 or any successor statute thereto, Contractor shall be required to file such claim with the City in strict conformance with the Government Claims Act (Government Code sections 900 et seq.).

27. TERMINATION

27.1 In the event that either party fails or refuses to perform any of the provisions of this Agreement at the time and in the manner required, that party shall be deemed in default in the performance of this Agreement. If such default is not cured within a period of two (2) calendar days, or if more than two (2) calendar days are reasonably required to cure the default and the defaulting party fails to give adequate assurance of due performance within two (2) calendar days after receipt of written notice of default, specifying the nature of such default and the steps necessary to cure such default, and thereafter diligently take steps to cure the default, the non-defaulting party may terminate the Agreement forthwith by giving to the defaulting party written notice thereof.

27.2 Notwithstanding the above provisions, City shall have the right, at its sole and absolute discretion and without cause, of terminating this Agreement at any time by giving no less than seven (7) calendar days' prior written notice to Contractor. In the

event of termination under this Section, City shall pay Contractor for Services satisfactorily performed and costs incurred up to the effective date of termination for which Contractor has not been previously paid. On the effective date of termination, Contractor shall deliver to City all reports, Documents and other information developed or accumulated in the performance of this Agreement, whether in draft or final form.

28. LABOR

28.1 Contractor shall conform with all applicable provisions of state and federal law including, but not limited to, applicable provisions of the federal Fair Labor Standards Act ("FLSA") (29 USCA § 201, *et seq.*).

28.2 Whenever Contractor has knowledge that any actual or potential labor dispute is delaying or threatens to delay the timely performance of this Agreement, Contractor shall immediately give written notice to City, and provide all relevant information.

28.3 Contractor represents that all persons working under this Agreement are verified to be U.S. citizens or persons legally authorized to work in the United States.

28.4 To the fullest extent permitted by law, Contractor shall indemnify, defend, and hold harmless City, its City Council, boards and commissions, officers, agents, volunteers, and employees from loss or damage, including but not limited to attorneys' fees, and other costs of defense by reason of actual or alleged violations of any applicable federal, state and local labor laws or law, rules, and/or regulations. This obligation shall survive the expiration and/or termination of the Agreement.

29. STANDARD PROVISIONS

29.1 Recitals. City and Contractor acknowledge that the above Recitals are true and correct and are hereby incorporated by reference.

29.2 Compliance with all Laws. Contractor shall, at its own cost and expense, comply with all statutes, ordinances, regulations and requirements of all governmental entities, including federal, state, county or municipal, whether now in force or hereinafter enacted. In addition, all Work prepared by Contractor shall conform to applicable City, county, state and federal laws, rules, regulations and permit requirements and be subject to approval of the Project Administrator and City.

29.3 Waiver. A waiver by either party of any breach, of any term, covenant or condition contained herein shall not be deemed to be a waiver of any subsequent breach of the same or any other term, covenant or condition contained herein, whether of the same or a different character.

29.4 Integrated Contract. This Agreement represents the full and complete understanding of every kind or nature whatsoever between the parties hereto, and all preliminary negotiations and agreements of whatsoever kind or nature are merged herein. No verbal agreement or implied covenant shall be held to vary the provisions herein.

29.5 Conflicts or Inconsistencies. In the event there are any conflicts or inconsistencies between this Agreement and the Scope of Services or any other attachments attached hereto, the terms of this Agreement shall govern.

29.6 Interpretation. The terms of this Agreement shall be construed in accordance with the meaning of the language used and shall not be construed for or against either party by reason of the authorship of the Agreement or any other rule of construction which might otherwise apply.

29.7 Amendments. This Agreement may be modified or amended only by a written document executed by both Contractor and City and approved as to form by the City Attorney.

29.8 Severability. If any term or portion of this Agreement is held to be invalid, illegal, or otherwise unenforceable by a court of competent jurisdiction, the remaining provisions of this Agreement shall continue in full force and effect.

29.9 Controlling Law and Venue. The laws of the State of California shall govern this Agreement and all matters relating to it and any action brought relating to this Agreement shall be adjudicated in a court of competent jurisdiction in the County of Orange, State of California.

29.10 Equal Opportunity Employment. Contractor represents that it is an equal opportunity employer and it shall not discriminate against any subcontractor, employee or applicant for employment because of race, religious creed, color, national origin, ancestry, physical handicap, medical condition, marital status, sex, sexual orientation, age or any other impermissible basis under law.

29.11 No Attorneys' Fees. In the event of any dispute or legal action arising under this Agreement, the prevailing party shall not be entitled to attorneys' fees.

29.12 Counterparts. This Agreement may be executed in two (2) or more counterparts, each of which shall be deemed an original and all of which together shall constitute one (1) and the same instrument.

[SIGNATURES ON NEXT PAGE]

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed on the dates written below.

**APPROVED AS TO FORM:
CITY ATTORNEY'S OFFICE**

Date: 7/10/25

By: [Signature]
Aaron C. Harp
City Attorney

7.10.25
AC

CITY OF NEWPORT BEACH,
a California municipal corporation

Date: _____

By: _____
Joe Stapleton
Mayor

ATTEST:

Date: _____

By: _____
Molly Perry
Interim City Clerk

CONTRACTOR:

**SMARTRISE ELEVATOR SERVICE
INC.,** a California corporation

Date: _____

By: _____
Arthur Gumm
Chief Executive Officer

Date: _____

By: _____
Andrea M Gumm
Chief Financial Officer

[END OF SIGNATURES]

Attachments: Exhibit A – Scope of Services
 Exhibit B – Schedule of Billing Rates
 Exhibit C – Insurance Requirements
 Exhibit D – Labor and Materials Payment Bond
 Exhibit E – Faithful Performance Bond

EXHIBIT A

SCOPE OF SERVICES

Facilities Covered

City-owned buildings and properties.

Equipment Covered: All equipment listed in **Appendix A** and any other elevator equipment at City managed facilities as requested by the City's project manager.

Contractor Supplied Equipment

The Contractor shall supply all transportation, tools and equipment necessary for completing all work related to provided services, which are covered within the hourly labor cost (e.g., vehicles, fuel surcharge, delivery or equipment, miscellaneous materials needed for maintenance, tools of the trade, etc.). Rental equipment needed for on-call repairs must be approved prior to use and substantiated with rental receipts for invoicing (e.g., scissor lifts, boom lifts, cranes, etc.).

Invoicing

All invoices for on-call services must include:

- Brief description of the work performed
- Date the services were performed
- Number of hours spent on all work billed on an hourly basis
- Description of any reimbursable expenditures (materials, rental equipment, etc.)
- Contracted labor rate
- Shall include the name and the classification of the employee who performed the work
- Material percentage markup

Invoices shall be submitted monthly. Receipts will be required at the time of invoicing to substantiate percentage markup. All shall be charged at cost plus no more than a 15% markup. Labor rates shall include supplies (e.g. miscellaneous small electrical fittings, rags, tape, lubricants, personal protective equipment, and sundries). Labor rates shall be charged at the standard labor rate specified in the Schedule of Billing Rates.

Response Requirements

- Call back within ninety (90) minutes after the initial request from the City for on-call services.
- Availability for same-day response, including after hours, weekends, and holidays.
- Contractor shall be available 24 hours a day, 7 days a week.
- Arrival within four (4) hours after initial call back.

Warranty

The Contractor's work shall carry a one (1) year workmanship warranty.

Workmanship & Materials

SCOPE OF SERVICES

- The Contractor shall provide all labor and materials required for the successful completion of a project or work.
- Labor rates shall include supplies (e.g. miscellaneous small electrical fittings, rags, tape, lubricants, personal protective equipment, and sundries).
- The City may reimburse the Contractor for materials procured, analyzed case-by-case, and agreed upon in the Contractor's proposal before work commences. Markup for materials is limited to cost plus a maximum of 15%.
- Receipts are required for reimbursement for materials purchased for projects.
- The City reserves the right to specify the type of material and/or equipment purchased per project. All equipment and material purchases must be preapproved by the Project Manager or designee.
- The City reserves the right to purchase materials directly and provide them to the Contractor. In such cases, the following conditions apply:
 - The Contractor shall conform to all City practices and procedures.
 - All City purchases are for the sole expressed use of and for the City.
 - The Contractor shall secure, store, inventory, distribute, and control all materials entrusted to the Contractor's representatives.
 - All materials and inventories shall be made available to the City upon request. The Contractor will reduce the unit cost for each maintenance task by the City's actual cost for the materials provided and used.
- The Contractor shall maintain work areas with a well-manicured, clean appearance, and all work shall be performed in a professional manner using quality equipment.
- The Contractor shall be responsible for any damages to public and/or private property caused during the course of the work.
- The Contractor shall recognize that during this Agreement, the City may have other contractors conducting other activities and/or operations in the immediate vicinity of requested work. Contractor shall make every effort to coordinate activities with existing operations. Other activities may include, but are not limited to, the following:
 - Landscape refurbishment
 - Modification or repair of existing facilities
 - Construction; and
 - Storm related operations
- All tools and materials shall always remain in Contractor's possession.
- All Contractor vehicles parked on site shall always be secure.
- Contractor shall ensure all precautions for safety are taken.
- Contractor shall obtain necessary building permits at no cost when required.
- As required, Contractor shall provide traffic control per the latest edition of the Manual on Uniform Traffic Control Devices (MUTCD) "Watch Manual."
- The Contractor is responsible for all underground service alerts prior to digging (DigAlert).

Inventory of Elevator Units

Appendix A within this Scope of Services shows the City's current inventory of elevator units. Included are passenger elevators and a lift. Where available, the manufacturer, model and serial numbers are provided.

Preventative Maintenance Services to be Provided

Contractor will perform maintenance visits to examine, maintain, adjust, lubricate and test elevators and lifts in accordance with the manufactures recommendations and industry standards.

Maintenance Frequencies

- Passenger Elevators – Quarterly Maintenance
- Lifts – Semi Annual Maintenance
- Fire Testing – Monthly Maintenance

Monthly Visits

Per the American Society of Mechanical Engineers (ASME) 17.1 Rule 1206.7, all elevators provided with firefighter's emergency operation shall be subjected to monthly Phase I recall testing by use of the main floor key switch. A minimum of one-floor operation while on Phase II to assure the system is maintained in proper operating order shall be performed. Any deficiencies shall be corrected, and a written record of findings shall be documented on the monthly firefighters recall log.

Testing must be completed by a CCCM.

Traction Elevator Covered Components

At a minimum, the following components shall be covered under any maintenance plan offered by the Contractor:

1. Relay Logic Control System
 - All control system components.
2. Microprocessor Control System
 - All control system components. System performance examinations will be conducted to ensure that dispatching and motion control systems are operating properly.
3. Geared/Gearless Machines
 - All geared and gearless machine components.
4. Wiring
 - All elevator control wiring and all power wiring from the elevator equipment input terminals to the motor.
5. Car Equipment
 - All elevator control system components on the car.
6. Hoistway And Pit Equipment
 - All elevator control equipment, car and counterweight buffers, overspeed governors, governor tension sheave assemblies, and car and counterweight safeties.
7. Rails And Guides
 - Guide rails, guide shoe gibs, and rollers.
8. Ropes
 - Hoist ropes, governor ropes, and compensation ropes.
9. Door Equipment

- Automatic door operators, hoistway and car door hangers, hoistway and car door contacts, door protective devices, hoistway door interlocks, door gibs, and auxiliary door closing devices.
10. Manual Freight Door Equipment
- Switches, retiring cams, interlocks, guide shoes, sheaves, rollers, chains, sprockets, tensioning devices, and counterbalancing equipment.
11. Power Freight Door Equipment
- Controller, relays, contactors, rectifiers, timers, resistors, solid state components, door motors, retiring cams, interlocks, switches, guide shoes, sheaves, rollers, chains, sprockets, and tensioning devices.
12. Signals And Accessories
- Car operating panels, hall push button stations, hall lanterns, emergency lighting, car and hall position indicators, car operating panels, fireman's service equipment and all other signals, and accessory facilities furnished and installed as an integral part of the elevator equipment. Re-lamping of signal fixtures is included only during Contractor's maintenance visits. Service requests for relamping of signal fixtures will be billed separately at Contractor's current labor rates.

On-Call Services to be Provided

Repair Visits

Non-Emergency Work - All non-emergency work on elevators or lifts not included in the maintenance scope of service must be authorized by the contract manager through a signed letter proposal and billed in accordance with the Schedule of Billing Rates in this Agreement.

Emergency Repair Work - Emergency repairs may be authorized by the contract manager through verbal authorization when necessary and must be billed in accordance with the Schedule of Billing Rates outlined in this Agreement.

Replacement Equipment, Parts, Materials, and Equipment Rentals

All replacement equipment, parts, materials, and equipment rentals will be supplied by the Contractor at a contracted markup as shown in the Schedule of Billing Rates. Receipts will be required at the time of invoicing to substantiate the percentage markup, with all charges at cost plus no more than a 15% markup. Labor rates for installation shall be charged at the standard labor rate specified in the Schedule of Billing Rates.

Service calls will be initiated by City staff, with no guarantee or implication of any specific quantity of service call work during the contract term.

Attachments:

- A. Appendix A – Equipment List



13523 Larwin Circle
Santa Fe Springs, CA 90670
(562) 921-0040 Ph
(562) 921-0041 Fx

April 3, 2025

City of Newport Beach – Public Works Agency
592 Superior Ave, Building A
Newport Beach, CA 92663

Re: **Intro Letter**
REQUEST FOR PROPOSALS NO. 25-42

To Whom it May Concern:

Since 2009 SmartRise Elevator has provided reliable and timely maintenance, repair, and modernization of hydraulic and traction elevators, wheelchair lifts, and dumbwaiters as well as new installations for major Universities, Hospitals, MOB's, School Districts, Cities, Counties, Property Management Companies, and the Federal Government to also include the Federal Prison System in the Southern California market. SmartRise Elevator is a fully licensed C-11 elevator company and signatory with the International Union of Elevator Contractors (IUEC) and all mechanics are employed through Local 18. SmartRise Elevator has a centrally located office and fully stocked warehouse in Santa Fe Springs, CA.

All our technicians are required to participate in ongoing safety and technical training which assures they are proficient with the latest technology and safety procedures. Our mechanics have experience working on all forms of traction and hydraulic equipment from companies such as Montgomery, Westinghouse, Dover, ThyssenKrupp, Kone, Otis, Schindler, Mitsubishi, Swift, MCE, ECC, and SmartRise Engineering to name a few. SmartRise Elevator also has the service tools to troubleshoot this equipment.

To make sure our service meets the needs of our clients, our route mechanics have a maximum of 120 hours of preventative maintenance per month allowing enough time for minor repairs and trouble calls. SmartRise Elevator is a Certified Quality Conveyance Company (CQCC) and all of our technicians are fully licensed with the State of California.

SmartRise Elevator Service Inc. will maintain the conveyance equipment as outlined in the Statement of Work and will provide a comprehensive maintenance program in connection with maximizing the performance, safety, and life span of the equipment.

During the term of the contract, SmartRise will provide maintenance services using our skilled elevator service technicians to examine, adjust, and lubricate and/or replace components as conditions warrant. SmartRise Elevator will service the conveyance equipment monthly to maintain the equipment in proper operating condition.

Kirsten Rivera- Gumm
Vice President of Sales
Direct 951-447-7876 / Office 562-921-0040



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KEY PERSONNEL WHO WILL OVERSEE THE CITY OF NEWPORT BEACH

Art Gumm – President and CEO

Will oversee all operational aspects of the company with respect to the VA Account. 33 years' experience in the elevator trade in the Los Angeles area in management, sales, service, repair, and modernization with ThyssenKrupp Elevator, Montgomery, Otis, and Amtech Elevator.

Gloria Mendez – Operations Manager

Over 23 years' experience in the elevator trade as a dispatcher, Repair and Modernization Assistant, and New Installation assistant with Millar Elevator and ThyssenKrupp Elevator. Gloria will oversee all service and repairs with the route and repair mechanics and all scheduling.

Andrea Gumm – Chief Financial Officer

Will oversee all accounting operations of the company and AR and AP departments. 14 years' experience in the elevator trade in accounting and HR. Will oversee all time tickets, billing, reporting, and contractual concerns required for the VA account.

Mike Chandler – Field Superintendent, SmartRise Elevator

With 35 years' experience in the trade as a licensed elevator mechanic through the State of California and the City of Los Angeles, Mr. Chandler has worked in new construction, modernization, service, and repair, and as troubleshooter for companies that include Dover, ThyssenKrupp Elevator, Otis, Schindler, and Golden State. Eighteen of those years have been with Dover/ThyssenKrupp. His diverse background includes field supervision and modernization foreman and holds his OSHA 10 card in safety training. Mr. Chandler's will include overseeing the field crews and providing any needed technical assistance and guidance.

Kirsten Rivera-Gumm – VP of Sales

Will oversee daily concerns, communication and attend all site meetings. With 10 years' experience in the elevator trade in sales of service, repair, and modernization SmartRise Elevator and Kone it allows me to have knowledge with many conveyances and codes. As the VP of Sales, Mrs. Rivera-Gumm would be the primary contact and would be interfacing and assisting with all inquiries and scope of work with the VA accounts to keep on point. With the diverse background and knowledge will allow her to best understand the unique client needs and provide realistic solution based consultation for all parties.



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MAINTENANCE METHOD FOR THE CITY OF NEWPORT BEACH

MANAGEMENT PLAN TO MEET CONTRACT PERFORMANCE STANDARDS & PREVENTION OF REOCCURRING DEFECTIVE SERVICES:

Customer service is priority one. A specific person would be assigned as the account manager to oversee the contract and communicate with The City of Newport Beach on a regular basis, attend meetings, and interface with mechanics, operations, and accounting to make sure all concerns are met. Our CFO will oversee and review all invoicing as well as be involved with any issues brought forth from The City of Newport Beach direct, from the account manager, and operations. Our President will oversee all departments, address issues to make sure staying on track and/or exceeding requirements of the RFP. Multiple layers of review and communication are the key to delivering the best customer service.

With respect to complaint resolution, the first point of contact is usually with the account manager who then investigates the complaint and meets with the appropriate department. This is then immediately reviewed internally with all levels of management and responded to with corrective action and then follow up communication with the customer regarding the resolution. Client dissatisfaction is not an option within SmartRise Elevator. If the resolution is not satisfactorily met, all departments would meet again internally to discuss and implement corrective procedures to guarantee the problem is not repeated and then arrange a meeting with the customer. Satisfied customers are paramount to the success of the company. Regaining customer trust is simply doing, implementing, and exceeding what we say we would do to correct the problem and have the checks and balance in place internally to prevent the problem from happening again.

CONTINGENCY PLAN:

SmartRise Elevator has 24/7 dispatching for trouble calls. We have dispatchers in our local office and an offsite after-hours dispatching system. All calls are immediately dispatched to our mechanics during the day and to our on-call mechanics after hours to meet any response times required. During the hours between 6:00am and 2:30pm all trouble calls will be dispatched to the on-site resident mechanic. After hours, all calls will be dispatched to the designated-on call mechanics.

QUALITY CONTROL PLAN:

SmartRise Elevator provides each conveyance with check charts (Maintenance Control Plan) that incorporate tasks required with each visit, monthly, quarterly, annually and includes an oil loss check chart and Fire Phase 1 & 2 log. A detailed maintenance control plan and check chart will be specifically tailored for the elevator to meet the elevator manufacturer's recommendations, and SmartRise Elevator requirements. All work also would meet with all ANSI A17.1, NEC codes etc. The MCP would be in each machine room for each elevator and utilized by the mechanic with each visit. Each task must be initialed by the mechanic when completed with each service visit. Service tickets are also generated manually and left on site as well as submitted to the office which also would verify time on site. The control plan would also be audited by our field superintendent to make sure work is adhered to.



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QUALITY ASSURANCE:

To help increase elevator performance and decrease downtime, SmartRise's technicians utilize the latest industry methods and technology available to SmartRise for each specific brand of elevator. SmartRise's technicians will be equipped with tools, documentation, and knowledge to troubleshoot each elevator, as well as have access to a comprehensive parts replacement inventory system. Behind SmartRise's technicians is a team devoted to elevator excellence. Also, SmartRise's internal quality control program ensures optimum and reliable operation of the elevator equipment. Each elevator has its own maintenance control plan that is in each machine room and checked off when each task is completed. Time tickets are also submitted to the office each week for review. Elevators and logs are routinely audited by the field superintendent. Any deviations from the are then addressed with the mechanic and reported to the office for resolution.

Locations that SmartRise Elevator Service currently maintains near the City of Newport Beach

- 2850 S. Fairview Street
- 2621 S. Bristol Street #108
- 2510 Red Hill Ave
- 1823 E. 17th Street Ste. 120
- 2024 N. Broadway
- 1029 E. 4th Street
- 10362 Saint Charles Way
- 1672 Sarrine Drive

COMPARIABLE SERVICE LOCATION

- City of Hermosa Beach
1301 Hermosa Ave
Hermosa Beach, CA 90254
(Service and Modernization of 1 elevator)
- City of Alhambra Police Department
211 S. 1st Street,
Alhambra, CA 91801
(Service and Modernization of 3 elevators)
- Northrop Grumman – Space Park
2425 Manhattan Beach Blvd
Redondo Beach, CA 90278
(Service and repair of 44 elevators)
- Northrop Grumman – El Segundo
One Hornet Way
El Segundo, CA 90245
(Service and repair of 6 elevators)
- The Atrium
19100 Von Karmen Ave Irvine, CA 92612
(Service and repair of 6 geared and 3 hydro elevators)



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Staffing Plan and Qualifications:

In addition to the key personnel that would be actively involved that is referenced above under Organizational Chart, we have 26 service, repair, and modernization mechanics to provide backup maintenance and/or repairs if required. Of that, we would assign one of the route mechanics to be the regular mechanic for the City of Newport Beach. All our mechanics are licensed elevator mechanics with the State of California, and we would make sure we have several badged and/or meet the requirements of the SOW to provide any backup or repairs as needed.

No work for preventative maintenance or repairs would be subcontracted, however we will make all attempts to utilize a DVBE if specific repairs are needed that require a subcontractor.

Additional Questions and Service Area Locations:

Our office/warehouse is in Santa Fe Springs, CA and our regional boundaries cover Riverside County, Orange County, Los Angeles County, High Deserts, Inland Empire, and Ventura County. The typical monthly workload for each route mechanic is approx. 120 hours per month to allow plenty of time for travel, light repairs, and to take trouble calls. Unit counts for each mechanic vary depending on the type of equipment, etc. thus the need to base their workload on hours. All other routes are typically assigned by area, so the mechanics are always close to their accounts for prompt response times and efficiency in doing their monthly maintenance.

To ensure a smooth transition we will have a kickoff meeting prior to the first service date with all necessary personnel to go over all pertinent information such as check in/out procedures, specific days/time for scheduled services, parking access, ect. Smartrise Elevator Service Inc is committed to partnering with you to provide safe ongoing operation of your vertical transportation equipment.

Thank you,

Kirsten Rivera- Gumm
Vice President of Sales
Direct 951-447-7876 / Office 562-921-0040

EXHIBIT B

SCHEDULE OF BILLING RATES

Exhibit B - Schedule of Billing Rates

Important Note: Rates are inclusive of all cost including, but not limited to labor, travel, supplies (e.g. miscellaneous small electrical fittings, rags, tape, lubricants, personal protective equipment, and sundries), equipment, delivery and disposal in the performance of the prescribed tasks.

Routine Maintenance					
Location – Unit		Costs Per Service Visit			ANNUAL COST
		Monthly Fire Testing	Quarterly Routine Maintenance	Semi-annual Routine Maintenance	
Central Library – Bistro Dumbwaiter (North End)				\$150.00	\$300.00
Central Library – Public Elevator		\$60.00	\$155.00		\$1,340.00
Central Library – Staff Elevator		\$60.00	\$155.00		\$1,340.00
City Hall – Bay A/B (Interior, Elevator No. 2)		\$60.00	\$490.00		\$2,680.00
City Hall – Bay D/E (Interior, Elevator No.1)		\$60.00	\$490.00		\$2,680.00
Civic Center Park – Pedestrian Walkway Elevator		\$60.00	\$490.00		\$2,680.00
Civic Center Parking Garage – North End Elevator		\$60.00	\$490.00		\$2,680.00
Corporate Yard – Central Warehouse Lift (Building H)					\$210.00
Marina Park Community Center – Public Elevator		\$60.00	\$490.00		\$2,680.00
Police Department – Staff Elevator		\$60.00	\$150.00		\$1,340.00
On-Call Labor					
Description	Unit	Minimum Hours	Regular Hours Rate (M-F 7am-4pm)	After-Hours Rate (M-F 4pm-7am, Weekends & Holidays)	
Journeyman Mechanic	Hourly	1 hour	\$319.00	\$774.00	
Apprentice Mechanic	Hourly	1 hour	\$244.00	\$593.00	
Helper	Hourly	1 hour	\$244.00	\$593.00	
On-Call Special Inspections					
Description		Unit		Rate	
Annual No-Load Test		Per Test		\$2,856.00	
5-Year Load Test		Per Test		\$2,856.00	

Standard billing rate sheet for on-call services shall be used for **as-needed and/or emergency repairs** outside of the fixed maintenance portion.

- All rates subject to comply with Prevailing Wage requirements and subject to Department of Industrial Relations (DIR) certified payroll submission.
- Rates are inclusive of materials used for general maintenance, (ex. rags, grease, wire nuts, lubricants, misc. hardware, etc.). Any reimbursements for unanticipated and pre-approved costs will require a receipt with a maximum 15% markup allowable.

CPI ADJUSTMENT: Billing rates may be given up to a 2% annual CPI increase upon the first anniversary of the contract and each anniversary thereafter in accordance with the terms of the Agreement.

EXHIBIT C

INSURANCE REQUIREMENTS – PUBLIC WORKS

1. Provision of Insurance. Without limiting Contractor's indemnification of City, and prior to commencement of Work, Contractor shall obtain, provide and maintain at its own expense during the term of this Contract, policies of insurance of the type and amounts described below and in a form satisfactory to City. Contractor agrees to provide insurance in accordance with requirements set forth here. If Contractor uses existing coverage to comply and that coverage does not meet these requirements, Contractor agrees to amend, supplement or endorse the existing coverage.
2. Acceptable Insurers. All insurance policies shall be issued by an insurance company currently authorized by the Insurance Commissioner to transact business of insurance in the State of California, with an assigned policyholders' Rating of A- (or higher) and Financial Size Category Class VII (or larger) in accordance with the latest edition of Best's Key Rating Guide, unless otherwise approved by the City's Risk Manager.
3. Coverage Requirements.
 - A. Workers' Compensation Insurance. Contractor shall maintain Workers' Compensation Insurance providing statutory benefits and Employer's Liability Insurance with limits of at least one million dollars (\$1,000,000) each employee for bodily injury by accident and each employee for bodily injury by disease in accordance with the laws of the State of California. In addition, Contractor shall require each subcontractor to similarly maintain Workers' Compensation Insurance and Employer's Liability Insurance in accordance with California law for all of the subcontractor's employees. The insurer issuing the Workers' Compensation insurance shall amend its policy by endorsement to waive all rights of subrogation against City, its City Council, boards and commissions, officers, agents, volunteers and employees. Contractor shall submit to City, along with the certificate of insurance, a Waiver of Subrogation endorsement in favor of City, its City Council, boards and commissions, officers, agents, volunteers and employees.
 - B. General Liability Insurance. Contractor shall maintain commercial general liability insurance, and if necessary excess/umbrella liability insurance, with coverage at least as broad as provided by Insurance Services Office form CG 00 01, in an amount not less than two million dollars (\$2,000,000) per occurrence, four million dollars (\$4,000,000) general aggregate and four million dollars (\$4,000,000) completed operations aggregate. The policy shall cover liability arising from bodily injury, property damage, products-completed operations, personal and advertising injury, and liability assumed under an insured contract

(including the tort liability of another assumed in a business contract).

- C. Automobile Liability Insurance. Contractor shall maintain automobile insurance at least as broad as Insurance Services Office form CA 00 01 covering bodily injury and property damage for all activities of Contractor arising out of or in connection with Work to be performed under this Contract, including coverage for any owned, hired, non-owned or rented vehicles, in an amount not less than one million dollars (\$1,000,000) combined single limit for each accident.
 - D. Excess/Umbrella Liability Insurance. If any Excess or Umbrella Liability policies are used to meet the limits of liability required by this contract, then said policies shall be "following form" of the underlying policy coverage, terms, conditions, and provisions and shall meet all of the insurance requirements stated in this contract, including, but not limited to, the additional insured and primary & non-contributory insurance requirements stated herein. No insurance policies maintained by the City, whether primary or excess, and which also apply to a loss covered hereunder, shall be called upon to contribute to a loss until the Contractor's primary and excess/umbrella liability policies are exhausted.
4. Other Insurance Requirements. The policies are to contain, or be endorsed to contain, the following provisions:
- A. Waiver of Subrogation. All insurance coverage maintained or procured pursuant to this Contract shall be endorsed to waive subrogation against City, its City Council, boards and commissions, officers, agents, volunteers and employees, or shall specifically allow Contractor or others providing insurance evidence in compliance with these requirements to waive their right of recovery prior to a loss. Contractor hereby waives its own right of recovery against City, and shall require similar written express waivers and insurance clauses from each of its subcontractors.
 - B. Additional Insured Status. All liability policies including general liability, products and completed operations, excess/umbrella liability, and automobile liability, if required, shall provide or be endorsed to provide that City, its City Council, boards and commissions, officers, agents, volunteers and employees shall be included as additional insureds under such policies.
 - C. Primary and Non Contributory. Contractor's insurance coverage shall be primary insurance and/or the primary source of recovery with respect to City, its City Council, boards and commissions, officers, agents, volunteers and employees. Any insurance or self-insurance maintained by City shall be excess of Contractor's insurance and shall not contribute with it.

- D. Notice of Cancellation. All policies shall provide City with thirty (30) calendar days' notice of cancellation or nonrenewal of coverage (except for nonpayment for which ten (10) calendar days' notice is required) for each required coverage except Builders Risk Insurance, which shall contain an endorsement with said required notices.
5. Additional Agreements Between the Parties. The parties hereby agree to the following:
- A. Evidence of Insurance. Contractor shall provide certificates of insurance to City as evidence of the insurance coverage required herein, along with a waiver of subrogation endorsement for workers' compensation and other endorsements as specified herein for each coverage. All of the executed documents referenced in this Contract must be returned to City within ten (10) regular City business days after the date on the "Notification of Award". Insurance certificates and endorsements must be approved by City's Risk Manager prior to commencement of performance. Current certification of insurance shall be kept on file with City at all times during the term of this Contract. The certificates and endorsements for each insurance policy shall be signed by a person authorized by that insurer to bind coverage on its behalf. At least fifteen (15) days prior to the expiration of any such policy, evidence of insurance showing that such insurance coverage has been renewed or extended shall be filed with the City. If such coverage is cancelled or reduced, Contractor shall, within ten (10) days after receipt of written notice of such cancellation or reduction of coverage, file with the City evidence of insurance showing that the required insurance has been reinstated or has been provided through another insurance company or companies. City reserves the right to require complete, certified copies of all required insurance policies, at any time.
- B. City's Right to Revise Requirements. The City reserves the right at any time during the term of the Contract to change the amounts and types of insurance required by giving Contractor ninety (90) calendar days' advance written notice of such change. If such change results in substantial additional cost to Contractor, City and Contractor may renegotiate Contractor's compensation.
- C. Right to Review Subcontracts. Contractor agrees that upon request, all agreements with subcontractors or others with whom Contractor enters into contracts with on behalf of City will be submitted to City for review. Failure of City to request copies of such agreements will not impose any liability on City, or its employees. Contractor shall require and verify that all subcontractors maintain insurance meeting all the requirements stated herein, and Contractor shall ensure that City is an additional

insured on insurance required from subcontractors. For CGL coverage, subcontractors shall provide coverage with a format at least as broad as CG 20 38 04 13.

- D. Enforcement of Contract Provisions. Contractor acknowledges and agrees that any actual or alleged failure on the part of City to inform Contractor of non-compliance with any requirement imposes no additional obligations on City nor does it waive any rights hereunder.
- E. Requirements not Limiting. Requirements of specific coverage features or limits contained in this Exhibit A are not intended as a limitation on coverage, limits or other requirements, or a waiver of any coverage normally provided by any insurance. Specific reference to a given coverage feature is for purposes of clarification only as it pertains to a given issue and is not intended by any party or insured to be all inclusive, or to the exclusion of other coverage, or a waiver of any type. If the Contractor maintains higher limits than the minimums shown above, the City requires and shall be entitled to coverage for higher limits maintained by the Contractor. Any available proceeds in excess of specified minimum limits of insurance and coverage shall be available to the City.
- F. Self-Insured Retentions. Contractor agrees not to self-insure or to use any self-insured retentions on any portion of the insurance required herein and further agrees that it will not allow any indemnifying party to self-insure its obligations to City. If Contractor's existing coverage includes a self-insured retention, the self-insured retention must be declared to City. City may review options with Contractor, which may include reduction or elimination of the self-insured retention, substitution of other coverage, or other solutions. Contractor agrees to be responsible for payment of any deductibles on their policies.
- G. City Remedies for Non Compliance. If Contractor or any subcontractor fails to provide and maintain insurance as required herein, then City shall have the right but not the obligation, to purchase such insurance, to terminate this Contract, or to suspend Contractor's right to proceed until proper evidence of insurance is provided. Any amounts paid by City shall, at City's sole option, be deducted from amounts payable to Contractor or reimbursed by Contractor upon demand.
- H. Timely Notice of Claims. Contractor shall give City prompt and timely notice of claims made or suits instituted that arise out of or result from Contractor's performance under this Contract, and that involve or may involve coverage under any of the required liability policies. City assumes no obligation or liability by such notice, but has the right (but not the duty) to monitor the handling of any such claim or claims if they are likely to involve City.

- I. Coverage not Limited. All insurance coverage and limits provided by Contractor and available or applicable to this Contract are intended to apply to the full extent of the policies. Nothing contained in this Contract or any other agreement relating to City or its operations limits the application of such insurance coverage.
- J. Coverage Renewal. Contractor will renew the coverage required here annually as long as Contractor continues to provide any Work under this or any other Contract or agreement with City. Contractor shall provide proof that policies of insurance required herein expiring during the term of this Contract have been renewed or replaced with other policies providing at least the same coverage. Proof that such coverage has been ordered shall be submitted prior to expiration. A coverage binder or letter from Contractor's insurance agent to this effect is acceptable. A certificate of insurance and/or additional insured endorsement as required in these specifications applicable to the renewing or new coverage must be provided to City with five (5) calendar days of the expiration of the coverages.
- K. Maintenance of General Liability Coverage. Contractor agrees to maintain commercial general liability coverage for a period of ten (10) years after completion of the Project or to obtain coverage for completed operations liability for an equivalent period.

EXHIBIT D

CITY OF NEWPORT BEACH BOND NO. _____ LABOR AND MATERIALS PAYMENT BOND

WHEREAS, the City of Newport Beach, State of California, has awarded to _____ hereinafter designated as the "Principal," an agreement for maintenance and/or repair services, in the City of Newport Beach, in strict conformity with the Agreement on file with the office of the City Clerk of the City of Newport Beach, which is incorporated herein by this reference.

WHEREAS, Principal has executed or is about to execute the Agreement and the terms thereof require the furnishing of a bond, providing that if Principal or any of Principal's subcontractors, shall fail to pay for any materials, provisions, or other supplies used in, upon, for, or about the performance of the Work agreed to be done, or for any work or labor done thereon of any kind, the Surety on this bond will pay the same to the extent hereinafter set forth.

NOW, THEREFORE, We the undersigned Principal, and, _____ duly authorized to transact business under the laws of the State of California, as Surety, (referred to herein as "Surety") are held and firmly bound unto the City of Newport Beach, in the sum of _____ Dollars (_____), lawful money of the United States of America, said sum being equal to 100% of the amount of any Letter Proposal accepted by City of over Twenty Five Thousand Dollars and 00/100 (\$25,000.00), payable by the City of Newport Beach under the terms of the Agreement; for which payment well and truly to be made, we bind ourselves, our heirs, executors and administrators, successors, or assigns, jointly and severally, firmly by these present.

THE CONDITION OF THIS OBLIGATION IS SUCH, that if the Principal or the Principal's subcontractors, fail to pay for any materials, provisions, or other supplies, implements or machinery used in, upon, for, or about the performance of the Work contracted to be done, or for any other work or labor thereon of any kind, or for amounts due under the Unemployment Insurance Code with respect to such work or labor, or for any amounts required to be deducted, withheld and paid over to the Employment Development Department from the wages of employees of the Principal and subcontractors pursuant to Section 13020 of the Unemployment Insurance Code with respect to such work and labor, then the Surety will pay for the same, in an amount not exceeding the sum specified in this Bond, and also, in case suit is brought to enforce the obligations of this Bond, a reasonable attorneys' fee, to be fixed by the Court as required by the provisions of Section 9554 of the Civil Code of the State of California.

The Bond shall inure to the benefit of any and all persons, companies, and corporations entitled to file claims under Section 9100 of the California Civil Code so as to give a right of action to them or their assigns in any suit brought upon this Bond, as required by and in accordance with the provisions of Sections 9500 *et seq.* of the Civil Code of the State of California.

And Surety, for value received, hereby stipulates and agrees that no change, extension of time, alterations or additions to the terms of the Agreement or to the Work to be performed thereunder shall in any wise affect its obligations on this Bond, and it does hereby waive notice of any such change, extension of time, alterations or additions to the terms of the Agreement or to the Work or to the specifications.

In the event that any principal above named executed this Bond as an individual, it is agreed that the death of any such principal shall not exonerate the Surety from its obligations under this Bond.

IN WITNESS WHEREOF, this instrument has been duly executed by the above named Principal and Surety, on the _____ day of _____, 20____.

Name of Contractor (Principal)

Authorized Signature/Title

Name of Surety

Authorized Agent Signature

Address of Surety

Print Name and Title

Telephone

**APPROVED AS TO FORM:
CITY ATTORNEY'S OFFICE**

Date:_____

By:_____

Aaron C. Harp
City Attorney

**NOTARY ACKNOWLEDGMENTS OF CONTRACTOR AND SURETY MUST BE
ATTACHED**

ACKNOWLEDGMENT

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

State of California

County of _____ } ss.

On _____, 20____ before me, _____,

Notary Public, personally appeared _____,

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

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

WITNESS my hand and official seal.

Signature

(seal)

ACKNOWLEDGMENT

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

State of California

County of _____ } ss.

On _____, 20____ before me, _____,

Notary Public, personally appeared _____,

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

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WITNESS my hand and official seal.

Signature

(seal)

EXHIBIT E

**CITY OF NEWPORT BEACH
BOND NO. _____
FAITHFUL PERFORMANCE BOND**

The premium charges on this Bond is \$ _____, being at the rate of \$ _____ thousand of the Agreement price.

WHEREAS, the City of Newport Beach, State of California, has awarded to _____ hereinafter designated as the "Principal," an agreement for maintenance and/or repair services in the City of Newport Beach, in strict conformity with the Agreement on file with the office of the City Clerk of the City of Newport Beach, which is incorporated herein by this reference.

WHEREAS, Principal has executed or is about to execute the Agreement and the terms thereof require the furnishing of a Bond for the faithful performance of the Agreement.

NOW, THEREFORE, we, the Principal, and _____, duly authorized to transact business under the laws of the State of California as Surety (hereinafter "Surety"), are held and firmly bound unto the City of Newport Beach, in the sum of _____ (_____) lawful money of the United States of America, said sum being equal to 100% of the amount of any Letter Proposal accepted by City of over Twenty Five Thousand Dollars and 00/100 (\$25,000.00), to be paid to the City of Newport Beach, its successors, and assigns; for which payment well and truly to be made, we bind ourselves, our heirs, executors and administrators, successors, or assigns, jointly and severally, firmly by these present.

THE CONDITION OF THIS OBLIGATION IS SUCH, that if the Principal, or the Principal's heirs, executors, administrators, successors, or assigns, fail to abide by, and well and truly keep and perform any or all the Work, covenants, conditions, and agreements in the Agreement and any alteration thereof made as therein provided on its part, to be kept and performed at the time and in the manner therein specified, and in all respects according to its true intent and meaning, or fails to indemnify, defend, and save harmless the City of Newport Beach, its officers, employees and agents, as therein stipulated, then, Surety will faithfully perform the same, in an amount not exceeding the sum specified in this Bond; otherwise this obligation shall become null and void.

As a part of the obligation secured hereby, and in addition to the face amount specified in this Performance Bond, there shall be included costs and reasonable expenses and fees, including reasonable attorneys fees, incurred by City, only in the event City is required to bring an action in law or equity against Surety to enforce the obligations of this Bond.

Surety, for value received, stipulates and agrees that no change, extension of time, alterations or additions to the terms of the Agreement or to the Work to be performed thereunder shall in any way affect its obligations on this Bond, and it does hereby waive

notice of any such change, extension of time, alterations or additions of the Agreement or to the Work or to the specifications.

This Faithful Performance Bond shall be extended and maintained by the Principal in full force and effect for one (1) year following the date of formal acceptance of the Project by City.

In the event that the Principal executed this bond as an individual, it is agreed that the death of any such Principal shall not exonerate the Surety from its obligations under this Bond.

IN WITNESS WHEREOF, this instrument has been duly executed by the Principal and Surety above named, on the _____ day of _____, 20____.

Name of Contractor (Principal)

Authorized Signature/Title

Name of Surety

Authorized Agent Signature

Address of Surety

Print Name and Title

Telephone

**APPROVED AS TO FORM:
CITY ATTORNEY'S OFFICE**
Date:_____

By:_____
Aaron C. Harp
City Attorney

*NOTARY ACKNOWLEDGMENTS OF
CONTRACTOR AND SURETY MUST BE ATTACHED*

ACKNOWLEDGMENT

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

State of California

County of _____ } ss.

On _____, 20____ before me, _____,

Notary Public, personally appeared _____,

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

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

WITNESS my hand and official seal.

Signature

(seal)

ACKNOWLEDGMENT

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

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Signature

(seal)