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Business Manager/CSBO

Date: June 13, 2017

Information/Discussion: Otis Elevator Company

Rationale:

The Board of Education approves all district agreements.

Discussion:

The administration is recommending the district enter into an agreement with Otis Elevator Company for the purpose of maintaining a service agreement for elevator services at Lincoln Hall. The service agreement calls for a monthly fee of \$180.00. The attached documents have been reviewed and revised by district legal counsel.

Recommendation:

This administration is requesting support of the Finance Committee to enter into an agreement with Otis Elevator Company.

**RIDER TO THAT CERTAIN SERVICE CONTRACT BETWEEN OTIS ELEVATOR
COMPANY AND THE BOARD OF EDUCATION OF LINCOLNWOOD SCHOOL
DISTRICT NO. 74**

This Rider is entered into this 8th day of June, 2017, and made a part of that certain Service Contract, dated May 24, 2017 and further identified as proposal number AHX610 by and between Otis Elevator Company ("Otis"), and the Board of Education of Lincolnwood School District No. 74, ("Board") (hereinafter, the "Agreement").

1. **Governing Provisions.** In the event of a conflict between the terms and conditions of this Rider and those of the Agreement, the terms and conditions herein shall govern. All other provisions of the Agreement not otherwise modified herein shall remain in full force and effect.

2. **Insurance.** Otis shall maintain commercial general liability insurance, on an occurrence basis, in the amount of \$1,000,000 per occurrence and \$2,000,000 in the aggregate. . In lieu of additional insured, Otis shall ensure that the Board, its individual Board members, employees and agents ("Indemnitees") are named insured on an Owner's and Contractor's Protective Liability Policy. Further, Otis, on behalf of itself and its insurers, waives any and all rights of subrogation any of them may have against the Indemnitees. A waiver of subrogation is granted in favor of the certificate holder on all liability policies, unless any loss, action or claim is caused by the sole negligence of the certificate holder.

3. **Illinois Human Rights Act Regulations and Compliance with Laws.** Otis shall comply with all applicable federal and state Equal Employment Opportunity Laws, including but not limited to the *Illinois Human Rights Act*, 775 ILCS 5/1-101 *et seq.*, and its implementing regulations. Otis further agrees to comply with all applicable laws, rules and regulations that apply to the provision of services under the Agreement.

4. **Certifications.** As required by the *Criminal Code*, 720 ILCS 5/33E-11, by entering into this Agreement, Otis certifies that it is not barred from contracting with any unit of State or local government as a result of a violation of any criminal statute including, but not limited to, the bid rigging (Section 33E-3) or bid rotating (Section 33E-4) provisions of the *Criminal Code*. Otis agrees that if this certification is false, the Board may declare the Agreement void. To the extent applicable, Otis further certifies that it will provide a drug free workplace as required by the *Illinois Drug Free Workplace Act*, 30 ILCS 580/1 *et seq.* If applicable, Otis shall collect and remit Illinois Use Tax on all sales of tangible personal property into the State of Illinois in accordance with the provisions of the *Illinois Use Tax Act*, 35 ILCS 105/1 *et seq.*, regardless of whether Otis is a "retailer maintaining a place of business within this State" as defined in Section 2 of the *Use Tax Act*. Further, to the extent applicable, Otis shall ensure that it performs all of the services under the Agreement in accordance with the *Illinois Prevailing Wage Act*, including, but not limited to, the payment of prevailing wages and the tender of certified payrolls to the Board. Otis hereby certifies that no of the employees providing services under the Agreement to the Board shall be prohibited from being on school property as a result of a conviction of any of the offenses enumerated in 105 ILCS 5/10-21.9. Otis further certifies and represents to the Board that none of the employees providing services under the Agreement to the Board are convicted sex offenders.

5. **Indemnification.** Otis agrees to indemnify and hold harmless the Indemnitees from and against any and all costs (including but not limited to reasonable attorneys' fees and court costs), losses, fines, penalties, causes of action, and damages, excluding consequential damages, whether to person or property, but only to the proportionate extent caused by any negligent acts or omissions of Otis or any breach of the Agreement. Further, Otis agrees waive any limitation of liability it may be entitled to under any worker's compensation laws or court interpretations thereof. Furthermore, the Board's obligations to indemnify Otis are hereby stricken from the Agreement.

6. **Waiver and Limitation of Liability.** Notwithstanding anything in the Agreement to the contrary, the Indemnitees do not waive or release any rights any of them may have by entering into this Agreement. Furthermore, Otis shall be responsible for its negligent acts and omissions in providing any services under the Agreement, and, moreover, any limitation of direct damages set forth in the Agreement is stricken. The Indemnitees shall retain all legal rights and remedies available to them as provided by law and equity.

7. **AS-Builts and Surveillance.** The Board shall have no obligation to provide Otis a complete set of "as built" wiring diagrams. Further, the Board shall have no obligation to keep the equipment that is the subject of the Agreement under controlled surveillance.


8. **Counterparts.** This Rider may be executed in several counterparts, and all so executed shall constitute one Agreement, binding upon all of the parties hereto, notwithstanding that all of the parties are not signatories to the original or the same counterpart; provided, however, that this Rider shall not be binding upon any party or signatory hereto until each person or entity which is to execute this Rider has so executed a counterpart thereof.

9. **Severability and Authority to Execute.** Should any provision of the Agreement be declared illegal by a court of competent jurisdiction, then said provision shall be deleted from the Agreement to the extent it is violative of the law, and the remaining provisions in the Agreement shall remain in full force and effect so long as the parties' intent in entering into the Agreement can still be met. Further, each signatory hereto represents that he/she has the proper corporate authority to execute this Rider and bind his/her entity to the terms hereof.

10. **Payment.** Notwithstanding anything in the Agreement to the contrary, all payments required under the Agreement shall be paid in accordance with the *Local Government Prompt Payment Act*. Payments may be made by electronic direct debit or check. Further, any fees or costs in excess of the price set forth in the Agreement to provide services must be approved in advance and in writing by the Board.

ACCEPTED:

OTIS ELEVATOR COMPANY

By: 
Holly Connors
Branch Manager
Chicago, North
Its: _____
Dated: 6/8/17

435306_1

ACCEPTED:

**BOARD OF EDUCATION OF
LINCOLNWOOD SCHOOL
DISTRICT NO. 74**

By: _____
Its: _____
Dated: _____



DATE: 05/31/2017

TO:
Lincoln Hall Middle School
6855 N. Crawford Ave
Lincolnwood, IL 60712

FROM:
Otis Elevator Company
651 W Washington Suite 1n
Chicago, IL 60661

EQUIPMENT LOCATION:
Lincoln Hall Middle School
6855 N Crawford Ave
Lincolnwood, IL 60712

Julian Sipiora
Phone: (312) 575-1606
Fax: (860) 660-2662

PROPOSAL NUMBER: AHX610

EQUIPMENT DESCRIPTION:

No Of Units	Type Of Units	Manufacturer	Customer Designation	Machine Number
1	HYDRAULIC	OTIS ELEVATOR COMPANY	OTIS	633062

OTIS SERVICE

We propose to furnish Otis Service on the equipment ("Units") described above. Otis Service is preventive maintenance service designed to extend equipment life.

OTIS MAINTENANCE MANAGEMENT SYSTEMSM

We will use the Otis Maintenance Management System preventive maintenance program to deliver service tailored to your specific building needs. Equipment type, component life, equipment usage, and building environment will be taken into account by the OMMS scheduling system, which will be used to plan maintenance activities in advance. The Units will be provided with devices to monitor equipment usage. We will use OMMS standard work processes developed and continuously improved by Otis.

Under this Contract, we will service the Units on the following terms and conditions:

PERFORMANCE

MAINTENANCE

We will maintain the Units using trained personnel directly employed and supervised by us. The maintenance will include inspection, lubrication, and minor adjustment of the following parts:

- Controllers, selectors and dispatching equipment, relays, solid-state components, transducers, resistors, condensers, power amplifiers, transformers, contacts, leads, dashpots, timing devices, computer and microcomputer devices, steel selector tapes, mechanical and electrical driving equipment, signal lamps, and position indicating equipment.
- Door operators, car door hangers, car door contacts, door protective devices, load weighing equipment, car frames, car safety mechanisms, platforms, car and counterweight guide shoes including rollers and gibs, and emergency car lighting.
- Hoistway door interlocks and hangers, bottom door guides, and auxiliary door closing devices.
- Machines, worms, gears, thrust bearings, drive sheaves, drive sheave shaft bearings, brake pulleys, brake coils, contacts, linings, and component parts.
- Motors, brushes, brush holders, and bearings.

- Governors, governor sheaves and shaft assemblies, bearings, contacts, governor jaws, deflector or secondary sheaves, car and counterweight buffers, car and counterweight guide rails, car and counterweight sheave assemblies, top and bottom limit switches, governor tension sheave assemblies, and compensating sheave assemblies.
- Pumps, pump motors, operating valves, valve motors, leveling valves, plunger packings, exposed piping, above ground plungers and cylinders, and hydraulic fluid tanks.

In addition, if conditions or usage warrant, we will repair or replace the following parts:

- Motor brushes, operating-switch and relay components, plug-in relays, special lamps for car and hall fixtures, special lamps for emergency car lighting, and fuses (except main line disconnect).

This Contract includes emergency minor adjustment callback services during our regular working hours.

EXCLUSIONS

Services, repairs and/or parts not listed above are specifically excluded. This Contract does not cover inspection, lubrication, adjustment or cleaning that requires disassembly. If you later request any of these services, you agree to pay extra at our regular billing rates.

RELIABILITY

PARTS COVERAGE

If necessary, due to normal usage and wear, Otis will repair or replace any of the parts specified above at their sole discretion, unless specifically excluded elsewhere in the contract. Any parts under this Contract requiring replacement will be replaced with parts selected by Otis.

QUALITY CONTROL

We will periodically conduct field audits of our personnel and the Units to maintain quality standards. Otis field engineers will provide technical assistance, technical information, and Code consultation to support our maintenance organization.

RESPONSIVENESS

24-HOUR DISPATCHING

We will, at your request, provide you with access to eService and our OTISLINE® 24-hour, year-round dispatching service. In the event a Unit malfunction occurs between regular examinations, you will be able to place a service call on eService or thru an OTISLINE customer service representative, who will, at your request, dispatch an examiner to perform emergency minor adjustment callback service. In the event Otis receives an emergency call from the phone in the elevator and a passenger indicates a need for assistance, Otis shall attempt to contact a building representative for an assessment of the situation and authorization to respond to the call. If Otis is unable to reach a building representative, Otis shall respond to the emergency call from the phone in the elevator. The visit will be treated as a Callback. It is your responsibility to have a representative available to receive and respond to OTISLINE calls; and (b) maintain working telephone equipment.

COMMUNICATION

CUSTOMER REPRESENTATIVE

An Otis representative will be available to discuss with you your elevator needs in the areas of modernization, traffic handling ability, recommendations and requirements of code authorities, proper use and care of the Units, and the OMMS program.

REPORTS – eSERVICE

We will use the OMMS program to record completion of maintenance procedures. We will, at your request, provide you access to eService. You will be able to access twelve (12) months of repair, completed maintenance procedure and service call history for the Unit(s). You will be responsible for obtaining Internet access to use eService.

SAFETY AND ENVIRONMENT

SAFETY TESTS – HYDRAULIC ELEVATORS

We will conduct an annual no load test and annual pressure relief valve test.

FIREFIGHTERS' SERVICE TEST

If the equipment has firefighters' service, you assume responsibility for performing and keeping a record of any Code required tests and for the maintenance, functioning and testing of the smoke and/or heat detectors.

If during the initial firefighters' service test any elevator firefighters' service is found to be inoperable, the building will be responsible for all of the cost associated with the repairs necessary to bring the unit in compliance with the applicable Codes.

If any applicable Code or governing authority mandates that such required tests be performed by a licensed elevator mechanic, Otis will provide such testing and service on an Open Order basis. You will be responsible for the costs associated with such testing and service.

SAFETY TRAINING

We will instruct our personnel to use appropriate personal protection equipment and follow safe work practices.

ENVIRONMENTAL PROTECTION

Otis endeavors to reduce generation of waste materials, to minimize risks to the environment, customers, the general public and Otis employees, and to comply with all federal and state environmental laws and regulations. Material Safety Data Sheet (MSDS) Manuals are available for review at your request.

You assume responsibility for removal of wastes, including but not limited to hydraulic oil, spoils, asbestos, etc., as it is not part of this Contract.

MAINLINE DISCONNECTS

You agree to engage a qualified electrician to service at least once annually the elevator mainline disconnects located in the elevator equipment room.

SHARED RESPONSIBILITY

You agree to provide us unrestricted ready and safe access to all areas of the building in which any part of the Units are located and to keep all machine rooms and pit areas free from water, stored materials, and debris. You agree to provide a safe work place for our personnel, and to remove and remediate any waste or hazardous materials in accordance with applicable laws and regulations.

If any Unit is malfunctioning or is in a dangerous condition, you agree to immediately notify us using the 24-hour OTISLINE service. Until the problem is corrected, you agree to remove the Unit from service and take all necessary precautions to prevent access or use.

You agree to properly post, maintain, and preserve any and all instructions or warnings to passengers in connection with the use of any Units.

In furtherance of OSHA's directive contained in 29 C.F.R. § 1910.147(f)(2)(i), which requires that a service provider (an "outside employer") and its customer (an "on-site employer") must inform each other of their respective lock out/tag out ("LOTO") procedures whenever outside servicing personnel are to be engaged in control of hazardous energy activities on the customer's site, Otis incorporates by reference its mechanical LOTO procedures and its electrical LOTO procedures. These procedures can be obtained at www.otis.com by (1) clicking on "The Americas" tab on the left side of the website; (2) choosing "US/English" to take you to the "USA" web page; (3) clicking on the "Otis Safety" link on the left side of the page; and (4) downloading the "Lockout Tagout Policy Otis 6.0" and "Mechanical Energy Policy Otis 7.0," both of which are in .pdf format on the right side of the website page. Customer agrees that it will disseminate

these procedures throughout its organization to the appropriate personnel who may interact with Otis personnel while Otis personnel are working on site at Customer's facility.

WORK SCHEDULE

NORMAL HOURS

All maintenance procedures and repairs will be performed during our regular working hours of our regular working days for the examiners who perform the service. All lamp and signal replacements will be performed during regular examinations.

For purposes of this Contract, a Callback is a response by Otis to a request for service or assistance made (a) by the customer or customer representative, (b) by the building or building representative; (c) by emergency personnel; (d) through the ADA phone line, and/or (e) through REM[®] monitoring system, for service or assistance, on an as needed basis, excluding regularly scheduled maintenance.

Regular working hours: 8:00 AM – 4:30 PM.

Regular working days: Monday – Friday excluding holidays.

OVERTIME

Callbacks outside of regular working hours will be billed at standard overtime rates.

OWNERSHIP AND LICENSES

WIRING DIAGRAMS

You agree to provide us with current wiring diagrams reflecting all previously made changes for Units covered by this Contract to facilitate proper maintenance of the equipment. We shall maintain the wiring diagrams so that they properly reflect any changes made by Otis to the equipment. These diagrams will remain your property.

OTIS SERVICE EQUIPMENT

Any counters, meters, tools, remote monitoring devices, or communication devices which we may use or install under this Contract remain our property, solely for the use of Otis employees. Such service equipment is not considered a part of the Units. You grant us the right to store or install such service equipment in your building and to electrically connect it to the Units. You will restrict access to the service equipment to authorized Otis personnel. You agree to keep the software resident in the service equipment in confidence as a trade secret for Otis. You will not permit others to use, access, examine, copy, disclose or disassemble the service equipment or the software resident in the service equipment for any purpose whatsoever. If the service is terminated for any reason, we will be given access to your premises to remove the service equipment, including the resident software, at our expense.

OTIS SOFTWARE

Software owned by Otis may be embedded in parts or otherwise provided by Otis as part of this maintenance agreement. You have the right to use this software only for operation of the units for which the part was provided. You may also make a backup or archival copy of the software, provided you reproduce the copyright notice and any other legend of ownership on the copy. You may not otherwise copy, display, adapt, modify, distribute, reverse assemble, reverse compile, or otherwise translate the software. You will not transfer possession of the software except as part of a transfer of ownership of the Units and the assumption of the rights and obligations under this agreement by the transferee.

NON-OTIS SOFTWARE

You retain your rights to any software not provided by Otis contained in the Units and agree to allow Otis to make one backup or archival copy for you.

SERVICE TOOLS

You are responsible to secure our right to use any special service tools required to maintain your non- Otis equipment. These tools must be provided prior to us beginning maintenance on such equipment.

THE UNITS

It is agreed that we do not assume possession or control of the Units, that such Units remain yours solely as owner and operator, lessee, or agent of the owner or lessee, and that you are solely responsible for all requirements imposed by any federal, state, or local law, Code, ordinance or regulation.

CLARIFICATIONS

We will not be required: (i) to make any tests other than that as specifically set forth herein, (ii) to make any replacements with parts of a different design or type, (iii) to make any changes in the existing design of the Units, (iv) to alter, update, modernize or install new attachments to any Units, whether or not recommended or directed by insurance companies or by governmental authorities, (v) to make repairs or replacements necessitated by failures detected during or due to testing of escalators or buried or unexposed hydraulic cylinders or piping; (vi) to replace or repair any component or system utilizing obsolete or discontinued parts, including parts for which the original design is no longer manufactured by the original equipment manufacturers, or parts where the original item has been replaced by an item of different design or is replaceable only by fabrication; (vii) to provide reconditioned or used parts. Without affecting our obligation to provide service under this Contract, you agree to permit us to train our personnel on the Units.

Should you require us to interface with a third party work order, insurance or safety systems, Otis will add an appropriate fee to cover the additional cost associated with this service.

We will not be liable for any loss, damage or delay due to any cause beyond our reasonable control including, but not limited to, acts of government, labor disputes, strikes, lockouts, fire, explosion, theft, floods, water, weather, earthquake, riot, civil commotion, war, commercial unavailability of parts, vandalism, misuse, abuse, mischief, or acts of God.

You assume responsibility for the cost of correcting all Elevator Code violations existing on the date we enter into this Contract. If such Code violations or other outstanding safety violations are not corrected in accordance with this Contract, Otis may with respect to the equipment not meeting Code requirements cancel this Contract without penalty by providing thirty (30) days written notice. Should you require us to interface with a third party work order, insurance or safety systems, Otis will add an appropriate fee to cover the additional cost associated with this service.

Notwithstanding any other agreement or provision to the contrary, under no circumstances will we be liable for any indirect, special or consequential damages of any kind including, but not limited to, fines or penalties, loss of profits, loss of rents, loss of good will, loss of business opportunity, additional financing costs, or loss of use of any equipment or property, whether in contract, tort, warranty or otherwise.

ALTERATIONS

You will not allow others to make alterations, additions, adjustments, or repairs to the equipment.

SPECIAL PROVISIONS

Notwithstanding any other provision herein to the contrary, the following provisions shall be applicable and govern in the event of conflict:

Non-Performance

The Customer may, by written notice to Otis, terminate this Contract if Otis fails to perform any of its material obligations hereunder and does not cure such failure within thirty (30) days after receipt of written notice from the Customer specifying in detail such failure.

CONTRACT PRICE AND TERM

CONTRACT PRICE

One hundred eighty dollars (\$ 180.00) per month, payable Annually.

All pricing is plus any applicable sales taxes unless supplied with tax exemption certificates.

TERM

The Commencement Date will be 06/22/2017.

The Term of this Contract unless modified under the extended term below, will be for five (5) years beginning on the Commencement Date.

PRICE ADJUSTMENT

The Contract Price will be adjusted annually to reflect increases or decreases in the labor cost.

The original Contract Price will be increased or decreased by the percent increase or decrease in the straight time hourly labor cost for the price adjustment month compared with such straight time hourly labor cost on 01/01/2017 which was 92.626. The phrase "straight time hourly labor cost" means the sum of the straight time hourly labor rate plus the hourly cost of fringe benefits paid to elevator examiners in the locality where the equipment is to be maintained.

~~In the event that you sell the building or your interest is terminated prior to the expiration of the Contract, you agree to assign the Contract to the new owner or successor and to cause the new owner to assume your obligations under this agreement. If the new owner or successor fails to assume your obligations under the Contract, then you agree to pay to Otis all sums due for the unexpired Term.~~

PAYMENTS

Payments will be made on a Annually basis, due on or before the last day of the month prior to the billing period, beginning on the Commencement Date.

The work shall be performed for the agreed price plus any applicable sales, excise or similar taxes as required by law. In addition to the agreed price, you shall pay to us any future applicable tax imposed on us, our suppliers or you in connection with the performance of the work described.

You agree to pay a late charge from the date such sums become due of one and one-half percent (1.5%) per month, or the highest legally permitted rate, whichever is less, on any balance past due for more than thirty (30) days, together with all costs (including, but not limited to, attorneys' fees) incurred by us to collect overdue amounts.

Failure to pay any sum due by you within sixty (60) days will be a material breach. We may at our option declare all sums due or to become due for the unexpired term immediately due and payable as liquidated damages, and until the same are paid be discharged from further obligations under the contract.

The method of payment will be electronic direct debit. To enable us to process direct debit payments, you agree to provide a copy of a voided check from your business bank account.

ACCEPTANCE

This proposal, when accepted by you below and approved by our authorized representative, will constitute the entire and exclusive contract between us for the services to be provided and your authorization to perform as outlined herein. All prior or contemporaneous oral or written representations or agreements not incorporated herein will be superseded. Any purchase order issued by you in connection with the services to be provided will be deemed to be issued for your administrative or billing identification purposes only, and the parties hereto intend that the terms and conditions contained herein will exclusively govern the services to be provided. We do not give up rights under any existing contract until this proposal is fully executed. This Contract may not be changed, modified, revised or amended unless in

writing signed by you and an authorized representative of Otis. Further, any manual changes to this form will not be effective as to Otis unless initialed in the margin by an authorized representative of Otis.

THIS QUOTATION is valid for ninety (90) days from the proposal date.

Submitted by: Julian Sipiora
 Title: Account Manager
 E-mail: julian.sipiora@otis.com

Accepted in Duplicate

CUSTOMER

Approved by Authorized Representative

Date: _____

Signed: _____

Print Name: - _____

Title - _____

E-mail: - _____

Name of Company - _____

Otis Elevator Company

Approved by Authorized Representative

Date: 6/8/17

Signed: [Signature]

Print Name: Holly Connors

Title Branch Manager

☐ Principal, Owner or Authorized Representative of Principal or Owner

☐ Agent: _____
 (Name of Principal or Owner)

BILL TO INFORMATION

Company Name: _____

Address: _____

Address 2: _____

City: _____

State: _____

Zip Code: _____

ACCOUNTS PAYABLE CONTACT

Name: _____

Phone Number: _____

Fax Number: _____

E-mail: _____

TAX STATUS

Are you tax exempt? Yes No

If yes, please provide tax exempt certificate

Do you require a Purchase Order be listed on your invoices? Yes No

If yes, please provide contact info for PO renewal:

Name: _____

Fax: _____

Phone: _____

E-Mail: _____

Would you like Otis to automatically debit your bank account for your maintenance invoices? Yes No

If yes, please provide blank check for bank routing and account information.