

Board Office Use:	
Legislative File Info.	
File ID Number	18-0989
Introduction Date	5-9-2018
Enactment Number	18-0778
Enactment Date	5/9/18 If



OAKLAND UNIFIED  
SCHOOL DISTRICT  
Community Schools. Thriving Students.

# Memo

**To** Board of Education

**From** Kyla Johnson-Trammell, Superintendent and Secretary, Board of Education  
Timothy White, Deputy Chief, Facilities Planning and Management

**Board Meeting Date** May 9, 2018

**Subject** Independent Consultant Agreement Less than \$90,200 - Star Elevator - Foster Educational Leadership Complex Project

**Action Requested** Approval by the Board of Education of an Independent Consultant Agreement less than \$90,200 between the District and Star Elevator, San Carlos, CA, for the latter to provide decommissioning of two elevators (passenger elevator State No. 41821 and freight elevator State No. 17761) to satisfy State requirements, in conjunction with the Foster Educational Leadership Complex Project, more specifically delineated in the Scope of Services in Exhibit "A", incorporated herein by reference as though fully set forth, commencing May 10, 2018 and concluding no later than October 31, 2019, in an amount not-to exceed \$20,584.00

**Discussion** Elevators are required to be decommissioned on site.

**LBP** (Local Business Participation Percentage) 0.00%

**Recommendation** Approval by the Board of Education of an Independent Consultant Agreement less than \$90,200 between the District and Star Elevator, San Carlos, CA, for the latter to provide decommissioning of two elevators (passenger elevator State No. 41821 and freight elevator State No. 17761) to satisfy State requirements, in conjunction with the Foster Educational Leadership Complex Project, more specifically delineated in the Scope of Services in Exhibit "A", incorporated herein by reference as though fully set forth, commencing May 10, 2018 and concluding no later than October 31, 2019, in an amount not-to exceed \$20,584.00

**Fiscal Impact** Fund 21, Measure J

**Attachments**

- Independent Consultant Agreement including scope of work
- Consultant Proposal
- Certificate of Insurance



**CONTRACT JUSTIFICATION FORM**  
**This Form Shall Be Submitted to the Board Office**  
**With Every Consent Agenda Contract.**

Legislative File ID No. 18-0989

Department: Facilities Planning and Management

Vendor Name: Star Elevator

Project Name: Foster Educational Leadership Complex Project No.: 15124

Contract Term: Intended Start: 4/9/2018 Intended End: ~~10/1/2019~~ 10/31/2019  
~~10/31/2019~~

Annual (if annual contract) or Total (if multi-year agreement) Cost: \$20,584.00

Approved by: Tadashi Nakadegawa

Is Vendor a local Oakland Business or have they meet the requirements of the

Local Business Policy?  Yes (No if Unchecked)

How was this Vendor selected?

This vendor is sole source for the District

Summarize the services this Vendor will be providing.

This vendor will be decommissioning the (2) elevators to satisfy the requirements of the State. There is a passenger elevator State No. 41821 and freight elevator State No. 17761 that needs to be decommissioned.  
  
An Owner's contingency of \$3,000 has been added.

Was this contract competitively bid?  Yes (No if Unchecked)

If No, please answer the following:

1) How did you determine the price is competitive?

Sole source vendor

2) Please check the competitive bid exception relied upon:

- Educational Materials**
- Special Services** contracts for financial, economic, accounting, legal or administrative services
- CUPCCAA Exception** (Uniform Public Construction Cost Accounting Act)
- Professional Service Agreements** of less than \$90,200 (increases a small amount on January 1 of each year)
- Construction related Professional Services** such as Architects, DSA Inspectors, Environmental Consultants and Construction Managers (require a "fair, competitive selection process)
- Energy** conservation and alternative energy supply (e.g., solar, energy conservation, co-generation and alternative energy supply sources)
- Emergency** contracts
- Technology** contracts
  - electronic data-processing systems, supporting software and/or services (including copiers/printers) over the \$86,000 bid limit, must be competitively advertised, but any one of the three lowest responsible bidders may be selected
  - contracts for computers, software, telecommunications equipment, microwave equipment, and other related electronic equipment and apparatus, including E-Rate solicitations, may be procured through an RFP process instead of a competitive, lowest price bid process
  - Western States Contracting Alliance Contracts (WSCA)
  - California Multiple Award Schedule Contracts (CMAS) [contracts are often used for the purchase of information technology and software]
- "Piggyback" Contracts** with other governmental entities
- Perishable Food**
- Sole Source**
- Change Order for Material and Supplies** if the cost agreed upon in writing does not exceed ten percent of the original contract price
- Other, please provide specific exception**

3)  **Not Applicable - no exception - Project was competitively bid**

**INDEPENDENT CONSULTANT**  
**Less Than \$90,200**

This Independent Consultant Agreement for Professional Services ("Agreement") is made and entered into as of the **25th day of April 2018**, by and between the **Oakland Unified School District** ("District") and **Star Elevator** ("Consultant"), (together, "Parties").

**WHEREAS**, the District is authorized to contract with and employ any persons for the furnishing of special and professional services and advice if those persons are specially trained and experienced and competent to perform the services required;

**WHEREAS**, the District is in need of such services and advice and the Consultant warrants that it is specially trained, licensed and experienced and competent to perform the services required by the District;

**WHEREAS**, the Consultant agrees to perform the services described in this Agreement in accordance with the standards of its profession, to District's satisfaction, and in accordance with this Agreement.

**NOW, THEREFORE**, the Parties agree as follows:

1. **Services.** Consultant shall furnish to the District the following services, as more fully described in **Exhibit "A,"** attached hereto and incorporated herein by this reference ("Services"):

Scope of Services to provide for decommissioning of the two elevators, passenger elevator State No. 41821 and freight elevator State No. 17761, to satisfy State requirements.

2. **Term.** Consultant shall commence providing Services under this Agreement on **May 10, 2018**, and will diligently perform as required and complete performance by **October 31, 2019**, unless this Agreement is terminated and/or otherwise cancelled prior to that time. This Agreement may be extended upon mutual approval of both parties in writing on an annual basis to the extent permissible under applicable law.

3. **Submittal of Documents.** The Consultant shall not commence the Services under this Contract until the Consultant has submitted and the District has approved the certificate(s) and affidavit(s), and the endorsement(s) of insurance required as indicated below:

<u>  X  </u> Signed Agreement	<u>  X  </u> W-9 Form
<u>  X  </u> Insurance Certificates & Endorsements	<u>  X  </u> Workers' Compensation Certificate
<u>  X  </u> Debarment Certification	Other: _____
<u>  X  </u> Fingerprinting/Criminal Background Investigation Certification	

4. **Compensation.** District agrees to pay Consultant for Services satisfactorily rendered pursuant to this Agreement, a fixed fee of TWENTY THOUSAND FIVE HUNDRED EIGHTY-FOUR NO/100 Dollars (\$20,584.00), includes owner's contingency of \$3,000.00, paid monthly in proportion to Services performed.

- 4.1. District shall pay Consultant for all undisputed amounts in installment payments within thirty (30) days after the Consultant submits an invoice to the District for Services actually completed and after the District's written approval of the Services, or the portion of the Services for which payment is to be made (such approval not to be unreasonably withheld or delayed).

- 4.2. Any disputed invoiced amount which cannot be resolved in good faith between the Parties within fifteen (15) business days shall be resolved in accordance with Section 25 below.
5. **Expenses.** Expenses will not be charged for Consultant's performance of these Services.
6. **Materials.** Consultant shall furnish, at its own expense, all labor, materials, equipment, supplies and other items necessary to complete the services to be provided pursuant to this Agreement.
7. **Local, Small Local and Small Local Resident Business Enterprise (L/SL/SLRBE) Program:** Consultant shall comply with the requirements of District's L/SL/SLRBE Program, as applicable, which may require a fifty percent (50%) mandatory minimum local participation requirement in the performance of this Agreement. A copy of the District's Local Business Participation Policy can be obtained on the District's website, at [www.ousd.k12.ca.us](http://www.ousd.k12.ca.us), under District Services, Facilities Planning & Management Department, Bids and Requests for Proposals.
8. **Independent Contractor.** Consultant, in the performance of this Agreement, shall be and act as an independent contractor. Consultant understands and agrees that it and all of its employees shall not be considered officers, employees, agents, partner, or joint venture of the District, and are not entitled to benefits of any kind or nature normally provided employees of the District and/or to which District's employees are normally entitled, including, but not limited to, State Unemployment Compensation or Worker's Compensation. Consultant shall assume full responsibility for payment of all federal, state and local taxes or contributions, including unemployment insurance, social security and income taxes with respect to Consultant's employees. In the performance of the Services herein contemplated, Consultant shall have the sole authority for controlling and directing the performance of the details of the work, District being interested only in the results obtained.
9. **Performance of Services / Standard of Care.**
- 9.1. **Standard of Care.** Consultant represents that Consultant has the qualifications and ability to perform the Services in a professional manner, without the advice, control or supervision of District. Consultant's Services will be performed, findings obtained, reports and recommendations prepared in accordance with generally and currently accepted principles and practices of its profession for services to California school districts. Consultant's Services will be performed with due care and in accordance with applicable law, code, rule, regulation, and/or ordinance.
- 9.1.1. Consultant hereby represents that it possesses the necessary professional capabilities, qualifications, licenses, skilled personnel, experience, expertise, and financial resources, and it has available and will provide the necessary equipment, materials, tools, and facilities to perform the Services in an efficient, professional, and timely manner in accordance with the terms and conditions of the Agreement.
- 9.1.2. Consultant shall be responsible for the professional quality, technical accuracy, completeness, and coordination of the Services, and Consultant understands that the District relies upon such professional quality, accuracy, completeness, and coordination by Consultant in performing the Services.
- 9.1.3. Consultant shall ensure that any individual performing work under the Agreement requiring a California license shall possess the appropriate license required by the State of California. All personnel shall have sufficient skill and experience to perform the work assigned to them.

9.1.4. Consultant shall carefully study and compare all documents, findings, and other instructions and shall at once report to District, in writing, any error, inconsistency, or omission that Consultant or its employees may discover. Consultant shall use professional efforts in identifying any errors, inconsistencies, or omissions.

9.1.5. Any representations, recommendations, opinions or conclusions relating to the Services provided by Consultant must be made in writing by duly authorized representatives of Consultant.

9.2. **Meetings.** Consultant and District agree to participate in regular meetings to discuss strategies, timetables, implementations of services, and any other issues deemed relevant to the operation of Consultant's performance of Services.

9.3. **District Approval.** The work completed herein must meet the approval of the District and shall be subject to the District's general right of inspection and supervision to secure the satisfactory completion thereof.

10. **Originality of Services.** Except as to standard generic details, Consultant agrees that all technologies, formulae, procedures, processes, methods, writings, ideas, dialogue, compositions, recordings, teleplays and video productions prepared for, written for, or submitted to the District and/or used in connection with this Agreement, shall be wholly original to Consultant and shall not be copied in whole or in part from any other source, except that submitted to Consultant by District as a basis for such services.

11. **Copyright/Trademark/Patent.** Consultant understands and agrees that all matters produced under this Agreement shall become the property of District and cannot be used without District's express written permission. District shall have all right, title and interest in said matters, including the right to secure and maintain the copyright, trademark and/or patent of said matter in the name of the District (specifically excluding any underlying pre-existing intellectual property). District may, with Consultant's prior written consent, use Consultant's name in conjunction with the sale, use, performance and distribution of the matters, for any purpose and in any medium.

## 12. Termination.

12.1. **For Convenience by District.** District may, at any time, with or without reason, terminate this Agreement and compensate Consultant only for services satisfactorily rendered to the date of termination. Written notice by District shall be sufficient to stop further performance of services by Consultant. Notice shall be deemed given when received by the Consultant or no later than three (3) calendar days after the day of mailing, whichever is sooner.

12.2. **For Convenience by Consultant.** Consultant may, upon sixty (60) days notice, with or without reason, terminate this Agreement. Upon this termination, District shall only be obligated to compensate Consultant for services satisfactorily rendered to the date of termination. Written notice by Consultant shall be sufficient to stop further performance of services to District. Consultant acknowledges that this sixty (60) day notice period is acceptable so that the District can attempt to procure the Services from another source.

12.3. **With Cause by District.** District may terminate this Agreement upon giving of written notice of intention to terminate for cause. Cause shall include:

12.3.1. material violation of this Agreement by the Consultant; or

- 12.3.2. any act by Consultant exposing the District to liability to others for personal injury or property damage; or
- 12.3.3. Consultant is adjudged a bankrupt, Consultant makes a general assignment for the benefit of creditors or a receiver is appointed on account of Consultant's insolvency.

Written notice by District shall contain the reasons for such intention to terminate and, unless within three (3) calendar days after that notice the condition or violation shall cease or satisfactory arrangements for the correction thereof be made, this Agreement shall upon the expiration of the three (3) calendar days cease and terminate. In the event of this termination, the District may secure the required Services from another Consultant. If the expense, fees, and/or costs to the District exceeds the cost of providing the Services pursuant to this Agreement, the Consultant shall immediately pay the excess expense, fees, and/or costs to the District upon the receipt of the District's notice of these expense, fees, and/or costs. The foregoing provisions are in addition to and not a limitation of any other rights or remedies available to District.

- 12.4. Upon termination, Consultant shall provide the District with all documents produced maintained or collected by Consultant pursuant to this Agreement, whether or not such documents are final or draft documents.

**13. Indemnification.** To the furthest extent permitted by California law, Consultant shall indemnify, and hold harmless the District, its Governing Board, agents, representatives, officers, consultants, employees, trustees, and volunteers ("the Indemnified Parties") from any and all claims, arising out of, pertaining to or relating to the negligence, recklessness, errors or omissions, or willful misconduct of Consultant. Consultant shall, to the fullest extent permitted by California law, defend the Indemnified Parties at Consultant's own expense, including attorneys' fees and costs, from any and all claims arising out of, pertaining to, or relating to the negligence, recklessness, or willful misconduct of Consultant. The District shall have the right to accept or reject any legal representation that Consultant proposes to defend the indemnified parties.

**14. Insurance.**

- 14.1. Consultant shall procure and maintain at all times it performs any portion of the Services the following insurance with minimum limits equal to the amount indicated below.

- 14.1.1. **Commercial General Liability and Automobile Liability Insurance.** Commercial General Liability Insurance and Any Auto Automobile Liability Insurance that insure against all claims of bodily injury, property damage, personal injury, death, advertising injury, and medical payments arising from Consultant's performance of any portion of the Services. (Form CG 0001 and CA 0001)

- 14.1.2. **Workers' Compensation and Employers' Liability Insurance.** Workers' Compensation Insurance and Employers' Liability Insurance for all of its employees performing any portion of the Services. In accordance with provisions of section 3700 of the California Labor Code, the Consultant shall be required to secure workers' compensation coverage for its employees. If any class of employee or employees engaged in performing any portion of the Services under this Agreement are not protected under the Workers' Compensation Statute, adequate insurance coverage for the protection of any employee(s) not otherwise protected must be obtained before any of those employee(s) commence performing any portion of the Services.

14.1.3. **Professional Liability (Errors and Omissions).** Professional Liability (Errors and Omissions) Insurance as appropriate to the Consultant's profession.

Type of Coverage	Minimum Requirement
<b>Commercial General Liability Insurance</b> , including Bodily Injury, Personal Injury, Property Damage, Advertising Injury, and Medical Payments Each Occurrence General Aggregate	 \$ 1,000,000 \$ 2,000,000
<b>Automobile Liability Insurance - Any Auto</b> Each Occurrence General Aggregate	 \$ 1,000,000 \$ 2,000,000
<b>Professional Liability</b>	\$ 1,000,000
<b>Workers Compensation</b>	Statutory Limits
<b>Employer's Liability</b>	\$ 1,000,000

14.2. **Proof of Carriage of Insurance.** Consultant shall not commence performing any portion of the Services until all required insurance has been obtained and certificates indicating the required coverage's have been delivered in duplicate to the District and approved by the District. Certificates and Insurance policies shall include the following:

14.2.1. A clause stating: "This policy shall not be canceled or reduced in required limits of liability or amounts of insurance until notice has been mailed to the District, stating date of cancellation or reduction. Date of cancellation or reduction shall not be less than thirty (30) days after date of mailing notice."

14.2.2. Language stating in particular those insured, extent of insurance, location and operation to which insurance applies, expiration date, to whom cancellation and reduction notice will be sent, and length of notice period.

14.2.3. An endorsement stating that the District and its Governing Board, agents, representatives, employees, trustees, officers, consultants, and volunteers are named additional insureds under all policies except Workers' Compensation Insurance, Professional Liability, and Employers' Liability Insurance. An endorsement shall also state that Consultant's insurance policies shall be primary to any insurance or self-insurance maintained by District. An endorsement shall also state that there shall be a waiver of any subrogation.

14.2.4. All policies except the Professional Liability, Workers' Compensation, and Employers' Liability Insurance shall be written on an occurrence form.

14.3. **Acceptability of Insurers.** Insurance is to be placed with Insurers with a current A.M. Best's rating of no less than A: VII, unless otherwise acceptable to the District.

15. **Assignment.** The obligations of the Consultant pursuant to this Agreement shall not be assigned by the Consultant.

16. **Compliance with Laws.** Consultant shall observe and comply with all applicable rules and regulations of the governing board of the District and all applicable federal, state, and local laws, ordinances and regulations. Consultant shall give all notices required by any law, ordinance, rule and regulation bearing on conduct of the Services as indicated or specified. If Consultant observes that any of the Services required by this Agreement are at variance with any such laws, ordinance, rules or regulations, Consultant shall notify the District, in writing, and, at the sole



option of the District, any necessary changes to the scope of the Services shall be made and this Agreement shall be appropriately amended in writing, or this Agreement shall be terminated effective upon Consultant's receipt of a written termination notice from the District. If Consultant knowingly performs any work that is in violation of any laws, ordinances, rules or regulations, without first notifying the District of the violation, Consultant shall bear all costs arising therefrom.

17. **Certificates/Permits/Licenses/Registration.** Consultant and all Consultant's employees or agents shall secure and maintain in force such certificates, permits, licenses and registration as are required by law in connection with the furnishing of Services pursuant to this agreement.
18. **Safety and Security.** Consultant is responsible for maintaining safety in the performance of this Agreement. Consultant shall be responsible to ascertain from the District the rules and regulations pertaining to safety, security, and driving on school grounds, particularly when children are present.
19. **Employment with Public Agency.** Consultant, if an employee of another public agency, agrees that Consultant will not receive salary or remuneration, other than vacation pay, as an employee of another public agency for the actual time in which services are actually being performed pursuant to this Agreement.
20. **Anti-Discrimination.** It is the policy of the District that in connection with all work performed under contracts there be no discrimination against any employee engaged in the work because of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, age, sexual orientation, or military and veteran status and therefore the Consultant agrees to comply with applicable Federal and California laws including, but not limited to the California Fair Employment and Housing Act beginning with Government Code Section 12900 and Labor Code Section 1735 and District policy. In addition, the Consultant agrees to require like compliance by all its subcontractor(s).
21. **Fingerprinting of Employees.** The Fingerprinting/Criminal Background Investigation Certification must be completed and attached to this Agreement prior to Consultant's performing of any portion of the Services. Although District has determined that fingerprinting is not applicable to this Agreement, Consultant expressly acknowledges that the following conditions shall apply to any work performed by Consultant and/or Consultant's employees on a school site:
  - 21.1. All site visits shall be arranged through the District;
  - 21.2. Consultant and Consultant's employees shall inform District of their proposed activities and location at the school site, allowing District time to arrange site visits without a disruption to the educational process;
  - 21.3. Consultant and/or Consultant's employees shall check in with the school office each day immediately upon arriving at the school site;
  - 21.4. Once at such location, Consultant and Consultant's employees shall not change locations without contacting the District;
  - 21.5. Consultant and Consultant's employees shall not use student restroom facilities; and
  - 21.6. If Consultant and Consultant's employees find themselves alone with a student, Consultant and Consultant's employees shall immediately contact the school office and request that a member of the school staff be assigned to the work location.

22. **Audit.** Consultant shall establish and maintain books, records, and systems of account, in accordance with generally accepted accounting principles, reflecting all business operations of Consultant transacted under this Agreement. Consultant shall retain these books, records, and systems of account during the Term of this Agreement and for three (3) years thereafter. Consultant shall permit the District, its agent, other representatives, or an independent auditor to audit, examine, and make excerpts, copies, and transcripts from all books and records, and to make audit(s) of all billing statements, invoices, records, and other data related to the Services covered by this Agreement. Audit(s) may be performed at any time, provided that the District shall give reasonable prior notice to Consultant and shall conduct audit(s) during Consultant's normal business hours, unless Consultant otherwise consents.
23. **No Rights in Third Parties.** This Agreement does not create any rights in, or inure to the benefit of, any third party except as expressly provided herein.
24. **District's Evaluation of Consultant and Consultant's Employees and/or Subcontractors.** The District may evaluate the Consultant in any manner which is permissible under the law. The District's evaluation may include, without limitation:
- 24.1. Requesting that District employee(s) evaluate the Consultant and the Consultant's employees and subcontractors and each of their performance.
- 24.2. Announced and unannounced observance of Consultant, Consultant's employee(s), and/or subcontractor(s).
25. **Limitation of District Liability.** Other than as provided in this Agreement, District's financial obligations under this Agreement shall be limited to the payment of the compensation provided in this Agreement. Notwithstanding any other provision of this Agreement, in no event, shall District be liable, regardless of whether any claim is based on contract or tort, for any special, consequential, indirect or incidental damages, including, but not limited to, lost profits or revenue, arising out of or in connection with this Agreement for the services performed in connection with this Agreement.
26. **Disputes:** In the event of a dispute between the parties as to performance of the Services, the interpretation of this Agreement, or payment or nonpayment for work performed or not performed, the parties shall attempt to resolve the dispute in good faith. Pending resolution of the dispute, Consultant agrees it will neither rescind the Agreement nor stop the performance of the Services, but will allow determination by the court of the State of California, in the county in which the District's administration office is located, having competent jurisdiction of the dispute. Disputes may be determined by mediation if mutually agreeable, otherwise by litigation. Notice of the demand for mediation of a dispute shall be filed in writing with the other party to the Agreement. The demand for mediation shall be made within a reasonable time after written notice of the dispute has been provided to the other party, but in no case longer than ninety (90) days after initial written notice. If a claim, or any portion thereof, remains in dispute upon satisfaction of all applicable dispute resolution requirements, the Consultant shall comply with all claims presentation requirements as provided in Chapter 1 (commencing with section 900) and Chapter 2 (commencing with section 910) of Part 3 of Division 3.6 of Title 1 of Government Code as a condition precedent to the Consultant's right to bring a civil action against the District. For purposes of those provisions, the running of the time within which a claim must be presented to the District shall be tolled from the time the Consultant submits its written claim until the time the claim is denied, including any time utilized by any applicable meet and confer process.
27. **Confidentiality.** The Consultant and all Consultant's agents, personnel, employee(s), and/or subcontractor(s) shall maintain the confidentiality of all information received in the course of

performing the Services. This requirement to maintain confidentiality shall extend beyond the termination of this Agreement.

28. **Notice.** Any notice required or permitted to be given under this Agreement shall be deemed to have been given, served, and received if given in writing and either personally delivered or deposited in the United States mail, registered or certified mail, postage prepaid, return receipt required, or sent by overnight delivery service, or facsimile transmission, addressed as follows:

Oakland Unified School District  
955 High Street  
Oakland, CA 94601  
Tel: 510-535-7038; Fax: 510-535-7082  
ATTN: Cesar Monterrosa

Star Elevator  
1300 Industrial Road, Suite 4  
San Carlos, CA 94070  
Tel: 650-631-3999  
ATTN: Dalila Juarez

Any notice personally given or sent by facsimile transmission shall be effective upon receipt. Any notice sent by overnight delivery service shall be effective the business day next following delivery thereof to the overnight delivery service. Any notice given by mail shall be effective three (3) days after deposit in the United States mail.

29. **Integration/Entire Agreement of Parties.** This Agreement constitutes the entire agreement between the Parties and supersedes all prior discussions, negotiations, and agreements, whether oral or written. This Agreement may be amended or modified only by a written instrument executed by both Parties.
30. **California Law.** This Agreement shall be governed by and the rights, duties and obligations of the Parties shall be determined and enforced in accordance with the laws of the State of California. The Parties further agree that any action or proceeding brought to enforce the terms and conditions of this Agreement shall be maintained in the county in which the District's administration offices are located.
31. **Waiver.** The waiver by either party of any breach of any term, covenant, or condition herein contained shall not be deemed to be a waiver of such term, covenant, condition, or any subsequent breach of the same or any other term, covenant, or condition herein contained.
32. **Severability.** If any term, condition or provision of this Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remaining provisions will nevertheless continue in full force and effect, and shall not be affected, impaired or invalidated in any way.
33. **Incorporation of Recitals and Exhibit.** The Recitals and exhibit attached hereto are hereby incorporated herein by reference.
34. **Provisions Required By Law Deemed Inserted.** Each and every provision of law and clause required by law to be inserted in this Agreement shall be deemed to be inserted herein and this Agreement shall be read and enforced as though it were included therein.
35. **Authority to Bind Parties.** Neither party in the performance of any and all duties under this Agreement, except as otherwise provided in this Agreement, has any authority to bind the other to any agreements or undertakings.
36. **Attorney's Fees/Costs.** Should litigation be necessary to enforce any terms or provisions of this Agreement, then each party shall bear its own litigation and collection expenses, witness fees, court costs and attorney's fees.

**37. Captions and Interpretations.** Paragraph headings in this Agreement are used solely for convenience, and shall be wholly disregarded in the construction of this Agreement. No provision of this Agreement shall be interpreted for or against a party because that party or its legal representative drafted such provision, and this Agreement shall be construed as if jointly prepared by the Parties.

**38. Calculation of Time.** For the purposes of this Agreement, "days" refers to calendar days unless otherwise specified.

**39. Signature Authority.** Each party has the full power and authority to enter into and perform this Agreement, and the person signing this Agreement on behalf of each Party has been properly authority and empowered to enter into this Agreement.

**40. Counterparts.** This Agreement and all amendments and supplements to it may be executed in counterparts, and all counterparts together shall be construed as one document.

**Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion:** The District certifies to the best of its knowledge and belief, that it and its officials: are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency according to Federal Acquisition Regulation Subpart 9.4, and by signing this contract, certifies that this vendor does not appear on the Excluded Parties List. <https://www.sam.gov/portal/public/SAM>



**Cesar Monterrosa**  
**Director of Facilities Planning & Management**

**[SIGNATURES ON NEXT PAGE]**

**IN WITNESS WHEREOF, the Parties hereto have executed this Agreement** on the date indicated below:

**OAKLAND UNIFIED SCHOOL DISTRICT**

<i>Almee Eng</i>	5/9/18
Almee Eng, President, Board of Education	Date
<i>[Signature]</i>	5/9/18
Kyla Johnson-Trammell, Superintendent & Secretary, Board of Education	Date
<i>[Signature]</i>	5/11/18
Timothy White, Deputy Chief, Facilities Planning and Management	Date

**APPROVED AS TO FORM:**

<i>[Signature]</i>	5/11/18
OUSD Facilities Legal Counsel	Date

**CONSULTANT**

<i>[Signature]</i> , Treasurer	April 25, 2018
	Date

**Information regarding Consultant:**

Consultant: Star Elevator, Inc.  
License No.: 432744  
Address: 1300 Industrial Rd, #4  
San Carlos, CA 94070  
Telephone: 650-631-3999  
Facsimile: \_\_\_\_\_  
E-Mail: star@starelevator.com  
Type of Business Entity: *d.juarez@starelevator.com*  
\_\_\_\_ Individual  
\_\_\_\_ Sole Proprietorship  
\_\_\_\_ Partnership  
\_\_\_\_ Limited Partnership  
 Corporation, State: CA  
\_\_\_\_ Limited Liability Company  
\_\_\_\_ Other: \_\_\_\_\_

94-2837630 :  
Employer Identification and/or  
Social Security Number

**NOTE: United States Code, title 26, sections 6041 and 6109 require non-corporate recipients of \$600 or more to furnish their taxpayer identification number to the payer. The United States Code also provides that a penalty may be imposed for failure to furnish the taxpayer identification number. In order to comply with these rules, the District requires your federal tax identification number or Social Security number, whichever is applicable.**

**WORKERS' COMPENSATION CERTIFICATION**

Labor Code section 3700 in relevant part provides:

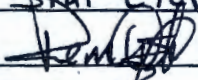
Every employer except the State shall secure the payment of compensation in one or more of the following ways:

- a. By being insured against liability to pay compensation by one or more insurers duly authorized to write compensation insurance in this state.
- b. By securing from the Director of Industrial Relations a certificate of consent to self-insure, which may be given upon furnishing proof satisfactory to the Director of Industrial Relations of ability to self-insure and to pay any compensation that may become due to his employees.

I am aware of the provisions of section 3700 of the Labor Code which require every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of that code, and I will comply with such provisions before commencing the performance of the Work of this Contract.

Date: April 25, 2018

Proper Name of Consultant: Star Elevator, Inc.

Signature: 

Print Name: Paul M. Chorato

Title: Treasurer

(In accordance with Article 5 - commencing at section 1860, chapter 1, part 7, division 2 of the Labor Code, the above certificate must be signed and filed with the awarding body prior to performing any Work under this Contract.)

**CERTIFICATION REGARDING DEBARMENT, SUSPENSION, INELIGIBILITY AND  
VOLUNTARY EXCLUSION**

The undersigned is aware of and hereby certify that neither Star Elevator ("Consultant") nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency. Further, the undersigned agrees to include this clause without modification in all lower tier transactions, solicitations, proposals, contracts and subcontracts.

Where the Consultant or any lower participant is unable to certify to this statement, it shall attach an explanation hereto.

IN WITNESS WHEREOF, this instrument has been duly executed by the Principal of the above named Consultant on the 25<sup>th</sup> day of April 2018 for the purposes of submission of this Agreement.

By:

  
\_\_\_\_\_  
Signature

Paul M. Onorato  
\_\_\_\_\_  
Typed or Printed Name

Treasurer  
\_\_\_\_\_  
Title

**FINGERPRINTING/CRIMINAL BACKGROUND INVESTIGATION CERTIFICATION**

One of the three boxes below **must** be checked, with the corresponding certification provided, and this form attached to the Independent Consultant Agreement for Professional Services ("Agreement"):

- Consultant's employees will have only limited contact, if any, with District pupils and the District will take appropriate steps to protect the safety of any pupils that may come in contact with Consultant's employees so that the fingerprinting and criminal background investigation requirements of Education Code section 45125.1 shall not apply to Consultant for the services under this Agreement. As an authorized District official, I am familiar with the facts herein certified, and am authorized to execute this certificate on behalf of the District. (Education Code § 45125.1 (c))

Date: \_\_\_\_\_

District Representative's Name and Title: \_\_\_\_\_

District Representative's Signature: \_\_\_\_\_

- The fingerprinting and criminal background investigation requirements of Education Code section 45125.1 apply to Consultant's services under this Agreement and Consultant certifies its compliance with these provisions as follows: *"Consultant certifies that the Consultant has complied with the fingerprinting and criminal background investigation requirements of Education Code section 45125.1 with respect to all Consultant's employees, subcontractors, agents, and subcontractors' employees or agents ("Employees") regardless of whether those Employees are paid or unpaid, concurrently employed by the District, or acting as independent contractors of the Consultant, who may have contact with District pupils in the course of providing services pursuant to the Agreement, and the California Department of Justice has determined that none of those Employees has been convicted of a felony, as that term is defined in Education Code section 45122.1. A complete and accurate list of all Employees who may come in contact with District pupils during the course and scope of the Agreement is attached hereto."*

- Consultant's services under this Agreement shall be limited to the construction, reconstruction, rehabilitation, or repair of a school facility and although all Employees will have contact, other than limited contact, with District pupils, pursuant to Education Code section 45125.2 District shall ensure the safety of the pupils by at least one of the following as marked:

- The installation of a physical barrier at the worksite to limit contact with pupils.

- Continual supervision and monitoring of all Consultant's on-site employees of Consultant by an employee of Consultant, \_\_\_\_\_, whom the Department of Justice has ascertained has not been convicted of a violent or serious felony.

- Surveillance of Employees by District personnel.

Date: \_\_\_\_\_

District Representative's Name and Title: \_\_\_\_\_

District Representative's Signature: \_\_\_\_\_

I am a representative of the Consultant entering into this Agreement with the District and I am familiar with the facts herein certified, and am authorized and qualified to execute this certificate on behalf of Consultant.

Date: April 25, 2018

Name of Consultant: Star Elevator, Inc.

Signature: *[Handwritten Signature]*

Print Name and Title: Paul M. Onorato



**EXHIBIT "A"**  
**DESCRIPTION OF SERVICES TO BE PERFORMED BY CONSULTANT**

**BASIC SCOPE OF SERVICES**

Star Elevator proposes to provide the following scope of services:

Scope of Services to provide decommissioning the two elevators, passenger elevator State No. 41821 and freight elevator State No. 17761, to satisfy State requirements.



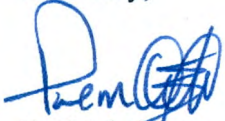
April 25, 2018

Re: Star Elevator Inc. Authorized Signatories

To whom it may concern:

The employees bearing President, Vice President, and Treasurer titles are hereby authorized to sign on behalf of Star Elevator Incorporated.

Sincerely,

  
Paul M. Onorato  
Treasurer



**DECOMMISSION TRACTION ELEVATOR**

**DATE:** ~~March 26, 2018~~ Revised April 3, 2018

**CUSTOMER**

Oakland Unified School District  
Facilities Planning & Management  
955 High Street  
Oakland, CA 94601

**ELEVATOR LOCATION**

1025 2<sup>nd</sup> Avenue  
Oakland, CA  
Passenger Elevator  
State No. 41821

Star Elevator will provide the labor and material to decommission the passenger traction elevator located at 1025 2<sup>nd</sup> Avenue, Oakland. This work includes the following:

1. Gain access to the elevator car top.
2. Remove material from car top. Material will be left outside of hoistway.
3. Hoist the car up and remove material from pit. Material will be left outside of hoistway.
4. Land the counterweight assembly onto its buffers in the elevator pit.
5. Secure the car for lowering.
6. Disconnect and remove the hoist cables.
7. Lower the elevator car onto its buffers in the elevator pit.
8. Disconnect and remove the wiring in the machine room between the mainline power disconnect switch and the elevator controller.
9. Verify that the hoistway doors at all landings are securely closed and locked. General Contractor to supply materials and board up openings, while Star repair crew is on site. See Note 3(c) below.
10. Notify the State of California, DIR-DOSH Elevator Unit, that the elevator has been properly decommissioned.

**Price: Seven Thousand One Hundred Ninety-Nine and 00/100 Dollars (\$7,199.00)**

Price includes applicable Sales Tax and is valid for thirty (30) days

**Notes:**

1. **General.** The above scope of work will decommission the elevator to satisfy the requirements of the State. Removal of any elevator components not specifically noted above is not included.
2. **Building Power.** In the event there is no power to the building, it will be Customer's responsibility to provide Star with a 120VAC power source at or near the elevator machine room. **If Customer authorizes Star to supply the required power and lighting its cost (approximately \$500 to \$800) plus 25% (for administration and overhead) will be added to the Base Price as an extra. To authorize Star Elevator to supply power and lighting, please initial where indicated: \_\_\_\_\_ (initials).**
3. **Other (Customer Responsibility).**
  - a. The building must be well lit and electrical outlets must be in working condition. **See Note 2 above.**
  - b. The building must be secured from trespassers.
  - c. The General Contractor must provide and install the material to board up openings.
    - i. **If Customer authorizes Star to provide and install the material to board up openings \$2,909.00 will be added to the Base Price as an extra. To authorize Star Elevator to supply power and lighting, please initial where indicated: \_\_\_\_\_ (initials).**
4. **Lead Time.** Lead time on materials is approximately two (2) weeks following authorization to proceed by Customer.
5. **Schedule.** Work will be scheduled as repair crews become available and materials are received. Unless otherwise agreed to, Star's normal repair hours are 6:00 AM to 2:30 PM, Monday through Friday (except holidays).
6. **Building Surfaces Protection.** Star will take reasonable industry-standard precautions to protect the surrounding walls and floors of the building; however, Customer is responsible for informing Star of any unusual wall or floor coverings / materials that will require specialized protective measures. If such

measures are required, Star will inform Customer of any resultant increase in Star's cost (labor or materials) which will be added as an extra to the Base Price above.

7. **Codes and Ordinances.** All designs, clearances, construction, workmanship and materials provided will be in accordance with California Elevator Safety Orders as well as local codes and ordinances in force as of the above proposal date.
8. **Disposal.** Any materials or parts removed by Star and not reused will be properly disposed of by Star.
9. **Field Work.** Once field work has begun the work will take approximately two (2) working days.
10. **State Inspection.** The State of California, DOSH Elevator Unit, may require this work to be inspected. In the event such inspection of the elevator is required, Star will submit a separate proposal for the labor and fees associated with coordinating the scheduling of the inspection with the State and then assisting with the inspection.

THE GENERAL TERMS AND CONDITIONS ATTACHED HERETO FORM AN INTEGRAL PART OF THIS AGREEMENT AND ALL OF SUCH TERMS AND CONDITIONS ARE PART OF THIS AGREEMENT AND ARE INCORPORATED HEREIN BY REFERENCE.

This Agreement is not valid until accepted by an officer of **Star Elevator, Inc.** (hereinafter "Star").

Accepted for **Customer**

By \_\_\_\_\_

Title \_\_\_\_\_ Date \_\_\_\_\_

Submitted for **Star Elevator, Inc.**

By *Dalila* \_\_\_\_\_

Accepted for **Star Elevator, Inc.**

By \_\_\_\_\_

Title \_\_\_\_\_ Date \_\_\_\_\_

## GENERAL TERMS AND CONDITIONS

**AUTHORITY:** If the **Customer** is a corporation, a limited liability company or a partnership, the individual who signs this Agreement on behalf of the **Customer** warrants that the signing individual is a duly authorized agent of the **Customer**. Furthermore, the **Customer** binds the **Customer**, the **Customer's** partners, successors, executors, administrators and assigns to this Agreement in respect to all its terms and conditions.

**CONTROL OF EQUIPMENT:** It is agreed that when **Star** is not working about or on **Customer's** elevator equipment **Star** does not assume the management or control thereof, and at any time **Star's** employees are working on the equipment, **Star** is asserting possession and control only over the specific component being worked on at any given moment, and possession and control of the remainder of the equipment shall remain with the **Customer**.

**TIME OF PERFORMANCE:** Unless otherwise agreed it is understood that the work covered under this Agreement shall be performed during regular working hours on regular working days. If overtime is mutually agreed upon and performed, the additional charge, at **Star's** usual billing rates for such work, shall be added as an extra cost to the Agreement price herein.

**CUSTOMER'S INDEMNITY OF STAR:** The **Customer** shall indemnify, defend and hold **Star** harmless from all loss, cost, expense and liability, including reasonable attorney's fees and court costs incurred by **Star** in connection with or related to **Customer's** elevators, equipment, and premises, except that there shall be no indemnity for claims to the extent that the claim is caused by the negligence or willful misconduct of **Star** and/or its employees.

**ACCESS:** **Customer** will provide **Star** employees with unrestricted access to the elevator equipment and will provide a safe place for **Star** employees to work.

**LIMITATION OF STAR'S LIABILITY:** **Star** shall not be liable for any environmental or ecological loss or damage due to leakage, malfunction, or failure of the elevator equipment unless caused solely by the negligence or willful misconduct of **Star** or its employees.

In consideration of the performance by **Star** of the services enumerated herein at the price stated, it is agreed that **Star** shall not be liable for the injury or death of any person or damage or destruction of any property except to the extent that such injury, death or damage is caused by the negligence or willful misconduct of **Star** or its employees. In such event, **Star's** liability to the **Customer** is further limited to a sum not to exceed the total amount that was paid to **Star** by the **Customer** under this Agreement.

**Star shall not be liable** for any loss, damage or failure to perform any work under this Agreement which loss, damage or failure arises from or is related to any delay in **Star's** performance as a result of or due to any cause that is unavoidable or beyond **Star's** reasonable control, including but not limited to delays or nonperformance caused by the acts of government, strikes, lockouts, unavailability of parts, materials, supplies or skilled labor, power outages, fire, exposure, theft, floods, earthquake, riot, civil disturbance, war, malicious mischief, or acts of God.

**UNDER NO CIRCUMSTANCES SHALL STAR BE LIABLE TO CUSTOMER FOR CONSEQUENTIAL, SPECIAL, GENERAL OR PUNITIVE DAMAGES RELATING TO OR RESULTING FROM ANY ALLEGED BREACH OF THIS AGREEMENT BY STAR OR NEGLIGENCE BY STAR. FURTHERMORE, STAR'S LIABILITY TO CUSTOMER IN THE EVENT OF THE BREACH OF THIS AGREEMENT BY STAR OR NEGLIGENCE BY STAR WILL BE LIMITED TO NO MORE THAN THE REPAYMENT AND REFUND TO CUSTOMER OF THE AMOUNT PAID TO STAR BY CUSTOMER UNDER THIS AGREEMENT.**

**NO WARRANTY:** **STAR** MAKES NO WARRANTY, EXPRESS OR IMPLIED, IN REGARD TO ITS LABOR, EXCEPT IT WARRANTS THAT ALL LABOR PROVIDED WILL BE OF A STANDARD QUALITY FOR THE ELEVATOR INDUSTRY IN THE STATE WHERE THE EQUIPMENT IS LOCATED. **STAR** MAKES NO WARRANTY, EXPRESS OR IMPLIED, IN REGARD TO ANY EQUIPMENT OR PARTS PROVIDED TO **CUSTOMER** OR AS TO THEIR DURABILITY EXCEPT THAT **STAR** WILL REPAIR OR REPLACE DEFECTIVE PARTS WITHIN NINETY (90) DAYS AFTER INSTALLATION AND UPON NOTICE WITHIN THAT TIME OF THE DEFECT. **STAR'S** SOLE LIABILITY IN THE EVENT OF ANY LOSS OR DAMAGE RELATING TO ANY FAILED OR DEFECTIVE PARTS WILL BE THE REPAIR OR REPLACEMENT OF THE DEFECTIVE PART IF **STAR** IS NOTIFIED OF THE FAILURE DURING THE WARRANTY PERIOD.

**INSURANCE:** **Star** shall at all times maintain workers compensation insurance as prescribed by State law and shall maintain liability insurance in an amount of at least \$1,000,000 per occurrence. **Customer** shall at all times maintain adequate comprehensive liability and property damage, including bodily injury, insurance covering the ownership, use, or operation of the equipment described herein. **Customer** agrees to repair or replace **Star's** material, equipment, or work on the premises should damage occur, through no fault of **Star**, by fire, theft, or otherwise.

**LATE PAYMENT:** In the event **Customer** fails to pay any sum due within thirty (30) days from date of invoice, **Star** may immediately discontinue its work until said sum is paid. Further, **Star** may collect a late payment charge of 1 1/2% per month on all past due amounts from the due date. **Customer** understands that, pursuant to applicable law and in the event of nonpayment for services rendered to **Customer** by **Star** or materials supplied by **Star**, **Star** has the right to place a mechanic's lien against the real property in which the elevator equipment is situated.

**TITLE TO PARTS:** Any machinery, implements, or apparatus furnished by **Star** hereunder shall remain the personal property of **Star** and **Star** will retain title thereto until final payment is made by **Customer**. Should **Customer** default on the final payment, **Star** shall have the right to retake possession of said personal property irrespective of the manner of attachment to the realty, the acceptance of notes, or sale, mortgage or lease of the premises. Any costs including reasonable attorney fees associated with such repossession shall be paid by the **Customer**.

**OLD OR UNUSED PARTS:** In the course of its work on **Customer's** equipment and as further consideration for its work, **Star** reserves the right to remove and retain all machinery, implements, apparatus, and materials that have been replaced or, if new, not used.

**BREACH:** In the event of a breach of this Agreement, including a breach due to nonpayment of sums due, **Star** may, at its option, provided that the **Customer** has not cured the breach within five (5) days of delivery of written notice of the breach and demand to cure, declare this Agreement terminated. In the event of such election to terminate, all unpaid sums for work performed and materials supplied or ordered shall be immediately due and, further, **Star** shall be entitled to recover an additional sum equal to one-half of the outstanding unpaid balance of the Agreement Price which sum, the parties agree, is a reasonable estimate of **Star's** liquidated damages for breach of this Agreement which damages would otherwise be difficult or impossible to accurately determine.

**ATTORNEY'S FEES:** In the event of litigation arising from any breach of this Agreement or the indemnity provisions hereof, the prevailing party shall be entitled to recover its court costs and reasonable attorney fees incurred.

Customer Initials: \_\_\_\_\_



**DECOMMISSION TRACTION ELEVATOR**

**DATE:** ~~March 27, 2018~~ Revised April 3, 2018

**CUSTOMER**

Oakland Unified School District  
Facilities Planning & Management  
955 High Street  
Oakland, CA 94601

**ELEVATOR LOCATION**

1025 2<sup>nd</sup> Avenue  
Oakland, CA  
Freight Elevator  
State No. 17761

Star Elevator will provide the labor and material to decommission the freight traction elevator located at 1025 2<sup>nd</sup> Avenue, Oakland. This work includes the following:

1. Disconnect and remove the wiring in the machine room between the mainline power disconnect switch and the elevator controller.
2. Verify that the hoistway doors at all landings are securely closed and locked. General Contractor to supply materials and board up openings, while Star repair crew is on site. See Note 3(c) below.
3. Notify the State of California, DIR-DOSH Elevator Unit, that the elevator has been properly decommissioned.

**Price: Three Thousand Seven Hundred Sixty-Seven and 00/100 Dollars (\$3,767.00)**

Price includes applicable Sales Tax and is valid for thirty (30) days

**Notes:**

1. **General.** The above scope of work will decommission the elevator to satisfy the requirements of the State. Removal of any elevator components not specifically noted above is not included.
2. **Building Power.** In the event there is no power to the building, it will be Customer's responsibility to provide Star with a 120VAC power source at or near the elevator machine room. **If Customer authorizes Star to supply the required power and lighting its cost (approximately \$500 to \$800) plus 25% (for administration and overhead) will be added to the Base Price as an extra. To authorize Star Elevator to supply power and lighting, please initial where indicated: \_\_\_\_\_ (initials).**
3. **Other (Customer Responsibility).**
  - a. The building must be well lit and electrical outlets must be in working condition. **See Note 2 above.**
  - b. The building must be secured from trespassers.
  - c. The General Contractor must provide and install the material to board up openings.
    - i. **If Customer authorizes Star to provide and install the material to board up openings \$2,909.00 will be added to the Base Price as an extra. To authorize Star Elevator to supply power and lighting, please initial where indicated: \_\_\_\_\_ (initials).**
4. **Lead Time.** Lead time on materials is approximately **two (2) weeks** following authorization to proceed by Customer.
5. **Schedule.** Work will be scheduled as repair crews become available and materials are received. Unless otherwise agreed to, Star's normal repair hours are 6:00 AM to 2:30 PM, Monday through Friday (except holidays).
6. **Building Surfaces Protection.** Star will take reasonable industry-standard precautions to protect the surrounding walls and floors of the building; however, Customer is responsible for informing Star of any unusual wall or floor coverings / materials that will require specialized protective measures. If such measures are required, Star will inform Customer of any resultant increase in Star's cost (labor or materials) which will be added as an extra to the Base Price above.
7. **Codes and Ordinances.** All designs, clearances, construction, workmanship and materials provided will be in accordance with California Elevator Safety Orders as well as local codes and ordinances in force as of the above proposal date.

- 8. **Disposal.** Any materials or parts removed by Star and not reused will be properly disposed of by Star.
- 9. **Field Work.** Once field work has begun the work will take approximately two (2) working days.
- 10. **State Inspection.** The State of California, DOSH Elevator Unit, may require this work to be inspected. In the event such inspection of the elevator is required, Star will submit a separate proposal for the labor and fees associated with coordinating the scheduling of the inspection with the State and then assisting with the inspection.

THE GENERAL TERMS AND CONDITIONS ATTACHED HERETO FORM AN INTEGRAL PART OF THIS AGREEMENT AND ALL OF SUCH TERMS AND CONDITIONS ARE PART OF THIS AGREEMENT AND ARE INCORPORATED HEREIN BY REFERENCE.

This Agreement is not valid until accepted by an officer of **Star Elevator, Inc.** (hereinafter "Star").

Accepted for **Customer**

By \_\_\_\_\_

Title \_\_\_\_\_ Date \_\_\_\_\_

Submitted for **Star Elevator, Inc.**

By  \_\_\_\_\_

Accepted for **Star Elevator, Inc.**

By \_\_\_\_\_

Title \_\_\_\_\_ Date \_\_\_\_\_

## GENERAL TERMS AND CONDITIONS

**AUTHORITY:** If the **Customer** is a corporation, a limited liability company or a partnership, the individual who signs this Agreement on behalf of the **Customer** warrants that the signing individual is a duly authorized agent of the **Customer**. Furthermore, the **Customer** binds the **Customer**, the **Customer's** partners, successors, executors, administrators and assigns to this Agreement in respect to all its terms and conditions.

**CONTROL OF EQUIPMENT:** It is agreed that when **Star** is not working about or on **Customer's** elevator equipment **Star** does not assume the management or control thereof, and at any time **Star's** employees are working on the equipment, **Star** is asserting possession and control only over the specific component being worked on at any given moment, and possession and control of the remainder of the equipment shall remain with the **Customer**.

**TIME OF PERFORMANCE:** Unless otherwise agreed it is understood that the work covered under this Agreement shall be performed during regular working hours on regular working days. If overtime is mutually agreed upon and performed, the additional charge, at **Star's** usual billing rates for such work, shall be added as an extra cost to the Agreement price herein.

**CUSTOMER'S INDEMNITY OF STAR:** The **Customer** shall indemnify, defend and hold **Star** harmless from all loss, cost, expense and liability, including reasonable attorney's fees and court costs incurred by **Star** in connection with or related to **Customer's** elevators, equipment, and premises, except that there shall be no indemnity for claims to the extent that the claim is caused by the negligence or willful misconduct of **Star** and/or its employees.

**ACCESS:** **Customer** will provide **Star** employees with unrestricted access to the elevator equipment and will provide a safe place for **Star** employees to work.

**LIMITATION OF STAR'S LIABILITY:** **Star** shall not be liable for any environmental or ecological loss or damage due to leakage, malfunction, or failure of the elevator equipment unless caused solely by the negligence or willful misconduct of **Star** or its employees.

In consideration of the performance by **Star** of the services enumerated herein at the price stated, it is agreed that **Star** shall not be liable for the injury or death of any person or damage or destruction of any property **except** to the extent that such injury, death or damage is caused by the negligence or willful misconduct of **Star** or its employees. In such event, **Star's** liability to the **Customer** is further limited to a sum not to exceed the total amount that was paid to **Star** by the **Customer** under this Agreement.

**Star shall not be liable** for any loss, damage or failure to perform any work under this Agreement which loss, damage or failure arises from or is related to any delay in **Star's** performance as a result of or due to any cause that is unavoidable or beyond **Star's** reasonable control, including but not limited to delays or nonperformance caused by the acts of government, strikes, lockouts, unavailability of parts, materials, supplies or skilled labor, power outages, fire, exposure, theft, floods, earthquake, riot, civil disturbance, war, malicious mischief, or acts of God.

**UNDER NO CIRCUMSTANCES SHALL STAR BE LIABLE TO CUSTOMER FOR CONSEQUENTIAL, SPECIAL, GENERAL OR PUNITIVE DAMAGES RELATING TO OR RESULTING FROM ANY ALLEGED BREACH OF THIS AGREEMENT BY STAR OR NEGLIGENCE BY STAR. FURTHERMORE, STAR'S LIABILITY TO CUSTOMER IN THE EVENT OF THE BREACH OF THIS AGREEMENT BY STAR OR NEGLIGENCE BY STAR WILL BE LIMITED TO NO MORE THAN THE REPAYMENT AND REFUND TO CUSTOMER OF THE AMOUNT PAID TO STAR BY CUSTOMER UNDER THIS AGREEMENT.**

**NO WARRANTY:** **STAR** MAKES NO WARRANTY, EXPRESS OR IMPLIED, IN REGARD TO ITS LABOR, EXCEPT IT WARRANTS THAT ALL LABOR PROVIDED WILL BE OF A STANDARD QUALITY FOR THE ELEVATOR INDUSTRY IN THE STATE WHERE THE EQUIPMENT IS LOCATED. **STAR** MAKES NO WARRANTY, EXPRESS OR IMPLIED, IN REGARD TO ANY EQUIPMENT OR PARTS PROVIDED TO **CUSTOMER** OR AS TO THEIR DURABILITY EXCEPT THAT **STAR** WILL REPAIR OR REPLACE DEFECTIVE PARTS WITHIN NINETY (90) DAYS AFTER INSTALLATION AND UPON NOTICE WITHIN THAT TIME OF THE DEFECT. **STAR'S** SOLE LIABILITY IN THE EVENT OF ANY LOSS OR DAMAGE RELATING TO ANY FAILED OR DEFECTIVE PARTS WILL BE THE REPAIR OR REPLACEMENT OF THE DEFECTIVE PART IF **STAR** IS NOTIFIED OF THE FAILURE DURING THE WARRANTY PERIOD.

**INSURANCE:** **Star** shall at all times maintain workers compensation insurance as prescribed by State law and shall maintain liability insurance in an amount of at least \$1,000,000 per occurrence. **Customer** shall at all times maintain adequate comprehensive liability and property damage, including bodily injury, insurance covering the ownership, use, or operation of the equipment described herein. **Customer** agrees to repair or replace **Star's** material, equipment, or work on the premises should damage occur, through no fault of **Star**, by fire, theft, or otherwise.

**LATE PAYMENT:** In the event **Customer** fails to pay any sum due within thirty (30) days from date of invoice, **Star** may immediately discontinue its work until said sum is paid. Further, **Star** may collect a late payment charge of 1 1/2% per month on all past due amounts from the due date. **Customer** understands that, pursuant to applicable law and in the event of nonpayment for services rendered to **Customer** by **Star** or materials supplied by **Star**, **Star** has the right to place a mechanic's lien against the real property in which the elevator equipment is situated.

**TITLE TO PARTS:** Any machinery, implements, or apparatus furnished by **Star** hereunder shall remain the personal property of **Star** and **Star** will retain title thereto until final payment is made by **Customer**. Should **Customer** default on the final payment, **Star** shall have the right to retake possession of said personal property irrespective of the manner of attachment to the realty, the acceptance of notes, or sale, mortgage or lease of the premises. Any costs including reasonable attorney fees associated with such repossession shall be paid by the **Customer**.

**OLD OR UNUSED PARTS:** In the course of its work on **Customer's** equipment and as further consideration for its work, **Star** reserves the right to remove and retain all machinery, implements, apparatus, and materials that have been replaced or, if new, not used.

**BREACH:** In the event of a breach of this Agreement, including a breach due to nonpayment of sums due, **Star** may, at its option, provided that the **Customer** has not cured the breach within five (5) days of delivery of written notice of the breach and demand to cure, declare this Agreement terminated. In the event of such election to terminate, all unpaid sums for work performed and materials supplied or ordered shall be immediately due and, further, **Star** shall be entitled to recover an additional sum equal to one-half of the outstanding unpaid balance of the Agreement Price which sum, the parties agree, is a reasonable estimate of **Star's** liquidated damages for breach of this Agreement which damages would otherwise be difficult or impossible to accurately determine.

**ATTORNEY'S FEES:** In the event of litigation arising from any breach of this Agreement or the indemnity provisions hereof, the prevailing party shall be entitled to recover its court costs and reasonable attorney fees incurred.

Customer Initials: \_\_\_\_\_







**WAIVER OF OUR RIGHT TO RECOVER FROM OTHERS ENDORSEMENT-CALIFORNIA  
BLANKET BASIS**

We have the right to recover our payments from anyone liable for an injury covered by this policy. We will not enforce our right against the person or organization named in the Schedule. (This agreement applies only to the extent that you perform work under a written contract that requires you to obtain this agreement from us.)

The additional premium for this endorsement shall be 2% of the total manual premium otherwise due on such remuneration. The minimum premium for this endorsement is \$350.

This agreement shall not operate directly or indirectly to benefit anyone not named in the Schedule.

**SCHEDULE**

**BLANKET WAIVER**

<b>Person/Organization</b>	Blanket Waiver – Any person or organization for whom the Named Insured has agreed by written contract to furnish this waiver.	
<b>Job Description</b>	<b>Waiver Premium</b>	
All CA Operations	\$5,205	

This endorsement changes the policy to which it is attached and is effective on the date issued unless otherwise stated.  
(The information below is required only when this endorsement is issued subsequent to preparation of the policy.)

Endorsement Effective 01/01/2018

Policy No. STWC922435

Endorsement No.

Insured

Premium \$

Insurance Company Cypress Insurance Company

Countersigned by \_\_\_\_\_



## DIVISION OF FACILITIES PLANNING & MANAGEMENT ROUTING FORM

<b>Project Name</b>	Foster Educational Leadership Complex Project	<b>Site</b>	310
---------------------	---	-------------	-----

### Basic Directions

Services cannot be provided until the contract is fully approved and a Purchase Order has been issued.

<b>Attachment Checklist</b>	<input type="checkbox"/> Proof of general liability insurance, including certificates and endorsements, if contract is over \$15,000 <input type="checkbox"/> Workers compensation insurance certification, unless vendor is a sole provider
-----------------------------	---

### Contractor Information

<b>Contractor Name</b>	Star Elevator	<b>Agency's Contact</b>	Dalila Juarez		
<b>OUSD Vendor ID #</b>	I004017	<b>Title</b>	Project Manager		
<b>Street Address</b>	1300 Industrial Road, Suite 4	<b>City</b>	San Carlos	<b>State</b>	CA Zip 94070
<b>Telephone</b>	650-631-3999	<b>Policy Expires</b>			
<b>Contractor History</b>	Previously been an OUSD contractor? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No		Worked as an OUSD employee? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No		
<b>OUSD Project #</b>	15124				

### Term

<b>Date Work Will Begin</b>	5-10-2018	<b>Date Work Will End By</b> <small>(not more than 5 years from start date)</small>	10-31-2019
-----------------------------	-----------	--	------------

### Compensation

<b>Total Contract Amount</b>	\$ 20,584.00	<b>Total Contract Not To Exceed</b>	\$20,584.00
<b>Pay Rate Per Hour (If Hourly)</b>	\$	<b>If Amendment, Changed Amount</b>	
<b>Other Expenses</b>		<b>Requisition Number</b>	

### Budget Information

*If you are planning to multi-fund a contract using LEP funds, please contact the State and Federal Office before completing requisition.*

Resource #	Funding Source	Org Key	Object Code	Amount
9450	Fund 21, Measure J	3109905890	6115	\$20,584.00

### Approval and Routing (in order of approval steps)

Services cannot be provided before the contract is fully approved and a Purchase Order is issued. Signing this document affirms that to your knowledge services were not provided before a PO was issued.

	<b>Division Head</b>	<b>Phone</b>	510-535-7038	<b>Fax</b>	510-535-7082
1.	<b>Director, Facilities Planning and Management</b>				
	<b>Signature</b>	<b>Date Approved</b>	5/1/18		
2.	<b>General Counsel, Department of Facilities Planning and Management</b>				
	<b>Signature</b>	<b>Date Approved</b>	5/1/18		
3.	<b>Deputy Chief, Facilities Planning and Management</b>				
	<b>Signature</b>	<b>Date Approved</b>	5/1/18		
4.	<b>Senior Business Officer, Board of Education</b>				
	<b>Signature</b>	<b>Date Approved</b>			
5.	<b>President, Board of Education</b>				
	<b>Signature</b>	<b>Date Approved</b>			