

Board Office Use: Legislative File Info.	
File ID Number	12-0780
Committee	Facilities
Introduction Date	3-28-2012
Enactment Number	12-1007
Enactment Date	3-29-12 JS



OAKLAND UNIFIED
SCHOOL DISTRICT

Memo

To Board of Education

From Tony Smith, Ed.D., Superintendent
Timothy White, Associate Superintendent, Facilities Planning and Management

Board Meeting Date March 28, 2012

Subject Professional Services Facilities Contract - Star Elevator - District-wide Elevator Repair Project

Action Requested Approval by the Board of Education of a Professional Services Facilities Contract with Star Elevator for District-wide Elevator Repair Services on behalf of the District at the District-Wide Project, in an amount not-to exceed \$170,000.00. The term of this Agreement shall commence on January 2, 2012 and shall conclude no later than December 31, 2012.

Background This contract is to provide Maintenance for the District-wide elevator and wheelchair lift repairs. Star Elevator is on call for repairs, responding to emergency calls for anyone stuck in elevators and responding to the State Elevator Inspector annual inspections and rectifying any problems.

Local Business Participation Percentage 0.00% (Sole Provider)

Strategic Alignment Among the key purposes of the District's Facilities Master Plan is to provide an academic environment for the Oakland community that will give every student, educator, and community member using our facilities the best possible opportunity for learning.

Through implementation of the Facilities Master Plan, the District intends to improve the District's facilities in terms of structural integrity, safety, reliability of operating (mechanical) systems, access to modern resources, number and type of appropriate laboratories and specialized instruction rooms, opportunities for physical education, and attractiveness, such that the Oakland Public Schools are second to none. Operation of the District schools under the planned approach is intended to ensure safety, cleanliness, and orderliness for all individuals participating in the learning process.



The basic facility needs of students such as proper lighting, functional roofs, noise control and well maintained buildings, not only convey the message that we value our students and teachers but may foster a sense of school pride and community ownership which may improve attitudes towards learning. The implementation of the Facilities Master Plan is our first step in that direction.

Recommendation

Approval by the Board of Education of a Professional Services Facilities Contract with Star Elevator for District-wide Elevator Repair Services on behalf of the District at the District-Wide Project, in an amount not-to exceed \$170,000.00. The term of this Agreement shall commence on January 2, 2012 and shall conclude no later than December 31, 2012.

Fiscal Impact

Deferred Maintenance

Attachments

- Professional Services Contract including scope of work

INDEPENDENT CONTRACTOR AGREEMENT FOR SERVICES

This Independent Contractor Agreement for Services ("Agreement") is made as of **September 28, 2011**, between the Oakland Unified School District ("District") and **Star Elevator** ("Consultant") (together, "Parties").

1. **Services.** The Consultant shall furnish to the District the services as described in Exhibit "A" attached hereto and incorporated herein by this reference ("Services" or "Work") Proposal dated **September 28, 2011**.
2. **Term.** Consultant shall commence providing services under this Agreement upon execution of the Agreement by both parties, and will diligently perform such services as required. The term for services and schedule to provide services shall be in accordance with the schedule included in the Consultant's Proposal, Attachment "A;"
3. **Submittal of Documents.** The Consultant shall not commence the Work 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;

_____ Signed Agreement
_____ Workers' Compensation Certificate, if necessary
_____ Criminal Background Investigation Certification, if necessary
_____ Insurance Certificates and Endorsements
_____ W-9 Form

4. **Compensation.** District compensation to the Consultant shall be as set forth in Exhibit "A" as the proposed fee for services, but in no event shall total fees, costs, and expenses exceed **\$170,000.00**, without the express approval of the Board.
5. **Expenses.** District shall not be liable to Consultant for any costs or expenses paid or incurred by Consultant in performing services for District, other than as provided in Exhibit "A."
6. **Independent Contractor.** Consultant, in the performance of this Agreement, shall be and act as an independent contractor. Consultant understands and agrees that he/she and all of his/her 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.
7. **Materials.** Consultant shall furnish, at his/her own expense, all labor, materials, equipment, supplies and other items necessary to complete the services to be provided pursuant to this Agreement.
8. **Standard of Care.** Consultant's services will be performed, findings obtained, reports and recommendations prepared in accordance with generally and currently accepted principles and practices of his/her profession for services to California school districts.

9. **Originality of Services.** 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.

10. **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. Consultant consents to use of Consultant's name in conjunction with the sale, use, performance and distribution of the matters, for any purpose and in any medium.

11. **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.

12. **Termination.**

12.1. **Without Cause 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 days after the day of mailing, whichever is sooner. In the event that District terminates this Agreement pursuant to this section, District shall compensate Consultant for work completed to date as a pro-rata amount of the full fees, costs, and expenses.

12.2. **Without Cause by Consultant.** Consultant may, upon thirty (30) 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 thirty (30) 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) business 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) business 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 costs to the District exceed the cost of providing the service 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 copies of all documents produced maintained or collected by Consultant pursuant to this Agreement, whether or not such documents are final or draft documents.

13. Indemnification.

- 13.1 Consultant shall indemnify, defend, and hold District, its directors, officers, agents, employees and representatives harmless from and against all claims, demands and judgments of any description arising out of or alleged to have arisen out of performance or nonperformance of this Agreement to the extent that such claims, demands and judgments are the result of any error, omission or negligent act of Consultant or any person employed or agent engaged by Consultant.
- 13.2 Specifically regarding professional negligent errors or omissions, the Consultant shall indemnify, defend, and hold harmless District, its directors, officers, agents, employees, and representatives from and against any and all demands, claims, loss, liability costs and damages (whether in contract, tort or strict liability) incurred by District, or any other person, and from any and all claims, demands and actions in law or equity (including reasonable attorneys' fees and litigation expenses) incurred by District, or any other person, to the proportionate extent that it is alleged to have arisen out of or arises out of or is in connection with the professional negligent errors or omissions of the Consultant in the performance of this contract. The indemnity and save harmless agreements expressed in this Section 13 shall not apply to the extent that doing so violates the provisions of Section 2782 of the California Civil Code.
- 13.3 Consultant shall place in its sub-consulting agreements and cause its sub-consultants to agree to indemnities and insurance obligations in the exact form and substance of those contained herein, each naming the District as an additional beneficiary or insured.

14. Insurance.

14.1. The Consultant shall procure and maintain at all times it performs any portion of the Services the following insurance:

14.1.1. **General Liability.** Two Million Dollars (\$2,000,000) combined single limit per occurrence for bodily injury, personal injury and property damage in the form of Comprehensive General Liability and Contractual Liability. If Commercial General Liability or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to each project/location or the general aggregate limit shall be twice the required occurrence limit.

14.1.2. **Automobile Liability Insurance.** Automobile Liability Insurance, Occurrence Form, that shall protect the Consultant the District from all claims of bodily injury, property damage, personal injury, death, and medical payments arising performing any portion of the Services by Consultant.

14.1.3. **Workers' Compensation and Employers' Liability Insurance.** For all of the Consultant's employees who are subject to this Agreement and to the extent required by the applicable state or federal law, Consultant shall keep in full force and effect, a Workers' Compensation policy. That policy shall provide employers' liability coverage with minimum liability coverage of One Million Dollars (\$1,000,000) per accident for bodily injury or disease. Contractor shall provide an endorsement that the insurer waives the right of subrogation against the District and its respective elected officials, officers, employees, agents, representatives, consultants, trustees, and volunteers.

14.1.4. **Other Insurance Provisions:** The general liability and automobile liability policies are to contain, or be endorsed to contain, the following provisions:

a. The District, its representatives, consultants, trustees, officers, officials, employees, agents, and volunteers ("Additional Insureds") are to be covered as additional insureds as respects liability arising out of activities performed by or on behalf of the Consultant; instruments of Service and completed operations of the Consultant; premises owned, occupied or used by the Consultant; or automobiles owned, leased, hired or borrowed by the Consultant. The coverage shall contain no special limitations on the scope of protection afforded to the Additional Insureds.

b. For any claims related to the projects, the Consultant's insurance coverage shall be primary insurance as respects the Additional Insureds. Any insurance or self-insurance maintained by the Additional Insureds shall be in excess of the Consultant's insurance and shall not contribute with it.

c. Any failure to comply with reporting or other provisions of the policies including breaches of warranties shall not affect coverage provided to the Additional Insureds.

d. The Consultant's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.

e. Each insurance policy required by this clause shall be endorsed to state that coverage shall not be suspended, voided, canceled by either party, reduced in coverage or in limits except after thirty (30) days prior written notice by U. S. Mail has been given to the District.

f. Consultant shall furnish the District with Certificates of insurance showing maintenance of the required insurance coverage and original endorsements affecting general liability and automobile liability coverage. The endorsements are to be signed by a person authorized by that insurer to bind coverage on its behalf. All endorsements are to be received and approved by the District before Work commence.

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 rules and regulations of the governing board of the District and all 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 Work as indicated or specified. If Consultant observes that any of the Work required by this Contract is 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 Work shall be made and this Contract shall be appropriately amended in writing, or this Contract shall be terminated effective upon Consultant's receipt of a written termination notice from the District. If Consultant 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. **Permits/Licenses.** Consultant and all Consultant's employees or agents shall secure and maintain in force such permits and licenses 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. **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, color, ancestry, national origin, religious creed, physical disability, medical condition, marital status, sexual orientation, gender, or age 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.

20. **Fingerprinting of Employees.** It is not contemplated at the time of execution of this Agreement that Consultant or its employees will have contact with students during the provision of services under this Agreement. If, at a future time, Consultant will have contact with any pupils, Consultant shall comply with the provisions of Education Code section 45125.1 regarding the submission of employee fingerprints to the California Department of Justice and the completion of criminal background investigations of its employees. The Consultant shall not permit any employee to have any contact with District pupils until such time as the Consultant has verified in writing to the governing board of the District that the employee has not been convicted of a felony, as defined in Education Code section 45122.1. The Consultant's responsibility shall extend to all employees, subcontractors, agents, and employees or agents of subcontractors regardless of whether those individuals are paid or unpaid, concurrently employed by the District, or acting as independent contractors of the Consultant. Verification of

compliance with this section and the Criminal Background Investigation Certification that may be required with this Agreement, shall be provided in writing to the District prior to each individual's commencement of employment or performing any portion of the Services and prior to permitting contact with any student.

21. **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:
- 21.1. Requesting that District employee(s) evaluate the Consultant and the Consultant's employees and subcontractors and each of their performance.
 - 21.2. Announced and unannounced observance of Consultant, Consultant's employee(s), and/or subcontractor(s).
22. **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.
23. **Mutual Limitation on Consequential Damages.** Notwithstanding any other provision of this Agreement, in no event, shall either Party 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.
24. **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.
25. **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:

District
Timothy E. White
Assistant Superintendent
Oakland Unified School District
955 High Street
Oakland, CA 94601

Consultant
Paul Onorado
Star Elevator
1300 Industrial Road, Suite 4
San Carlos, CA 94070

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) business days after deposit in the United States mail.

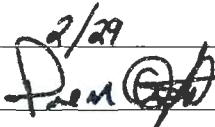
26. California Law. This Agreement shall be governed by and the rights, duties and obligations of the Parties shall be determined and enforced in accordance with the laws of the State of California. The Parties further agree that any action or proceeding brought to enforce the terms and conditions of this Agreement shall be maintained in Alameda County, California.

27. 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.

28. 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.

29. Incorporation of Recitals and Exhibits. The Recitals and each exhibit attached hereto are hereby incorporated herein by reference.

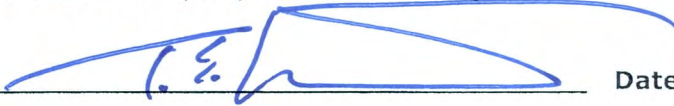
IN WITNESS WHEREOF, the Parties hereto have executed this Agreement on the date indicated below.

Date: 2/29, 2012
By: 
Print Name: Paul M. Oronato
Its: Treasurer


OAKLAND UNIFIED SCHOOL DISTRICT

By:  Date: 3/29/12
Jody London, President, Board of Education

By:  Date: 3/29/12
Edgar Rakestraw, Jr., Board Secretary

By:  Date: _____
Timothy E. White, Associate Superintendent
Facilities Planning and Management

By:  Date: 3.12.12
Cate Boskoff, Facilities Legal Counsel

File ID Number: 12-0780
Introduction Date: 3-28-12
Enactment Number: 12-1007
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By: 

Information regarding Consultant:

Consultant: Star Elevator, Inc.

License No.: 432744

Address: 1300 Industrial Road #4
San Jose, CA 95125

Telephone: 650-631-3999

Facsimile: 650-631-3927

E-Mail: paul@starelevator.com
star@starelevator.com

Type of Business Entity:

- Individual
- Sole Proprietorship
- Partnership
- Limited Partnership
- Corporation, State: California
- Limited Liability Company
- Other: _____

94-2837680 :
Employer Identification and/or Social Security Number

NOTE: Title 26, Code of Federal Regulations, sections 6041 and 6209, require non-corporate recipients of \$600.00 or more to furnish their taxpayer identification number to the payer. The regulations also provide that a penalty may be imposed for failure to furnish the taxpayer identification number. In order to comply with these regulations, the District requires your federal tax identification number or Social Security number, whichever is applicable.

AW

**Exhibit A
Scope of Services**

Scope

The scope of services is to provide the labor and materials for emergency callback service, equipment repairs, and to assist with State compliance for Oakland Unified School District ("District") elevators and wheelchair lifts located at various District schools and facilities.

Compensation

Contractor's compensation by the District shall be as follows:

Labor:

	Mechanic	Repair Crew
Regular Time *	\$209.00 / hour	\$343.00 / hour
Overtime (1.7) **	\$355.30 / hour	N/A
Double Time (2.0) ***	\$418/ hour	\$686.00 / hour

* Regular working hours for are 7:30 AM to 4:30 PM (Mechanics) and 6:30 AM to 2:30 PM (Repair Crews) Monday through Friday, holidays excepted.

** Overtime is after hours Monday through Friday and all Saturday; overtime work for Repair Crews is billed at Double Time rates.

*** Double time is Sundays and holidays.

All invoices with labor being charged must be submitted with job tickets identifying the District school or facility, the State No. of the elevator or lift, a description of the work performed, the name of the Mechanic performing the work, and the number of hours spent on the job (including travel). Invoices with material charges must be accompanied with copies of the materials invoices.

Labor rates are subject to change based on written agreement between the District and the Contractor.



- e. A Job Work Order Ticket ("JWOT") will be prepared by the mechanic which will include a description of the work performed and will show the amount of time on the job plus travel; the JWOT will be signed by an on-site District representative.
- f. The District will be billed at the agreed upon billing rates (see below) for the time on the job plus travel and the materials used.

5. **Other.** Perform such other work on the elevators or lifts that may be requested and authorized by the District.

6. **Billing Rates and Invoicing.**

a. **Billing Rates - Labor**

- i. Regular Time Service Mechanic: \$209 per man hour (7:30 AM to 4:30 PM)
- ii. Overtime Service Mechanic: \$308 per man hour (after regular hours and all day Saturdays)
- iii. Double Time Service Mechanic: \$355 per man hour (Sundays and holidays)
- iv. Regular Time Repair Crew: \$343 per crew hour (6:00 AM to 2:30 PM)
- v. Double Time Repair Crew: \$607 per crew hour (after regular hours, Saturdays, Sundays, holidays)

b. **Billing Rate - Material**

- i. Material cost plus 25%; applicable sales tax will be added.

c. **Invoicing**

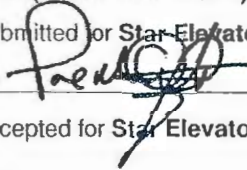
- i. Will identify the District school or facility and elevator(s) and lift(s) where the work was performed.
- ii. Will include description of the work performed.
- iii. Will include pricing for the labor hours and materials used.
- iv. Will be accompanied by JWOT(s) for the labor performed and vendor invoice copies for the materials used.

The total funds allocated with this authorization shall not exceed: \$170,000.00.

THE TERMS AND CONDITIONS PRINTED ON THE BACK HEREOF 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: _____

[Rev 8/1/2007]



August 1, 2011

Oakland Unified School District
Department of Facilities
Planning and Management
955 High Street
Oakland, CA 94601

Re: **PAST DUE ACCOUNT**

It has come to our attention that a significant number of invoices associated with this account are seriously past due as follows:

OUSD Locations	Total Account Balance	Due 0 – 30 Days	Due 31 – 60 Days	Past Due 61 – 90 Days	Past Due Over 90 Days
Various Schools	\$111,600.73	\$ 15,081.63	\$ 33,734.41	\$ 32,464.99	\$ 30,319.70

As you can see, \$62,784.69 is over 60 days old with \$30,319.70 over 90 days past due; a number of invoices are approaching 36 months overdue.

Please note that all invoices represent elevator repairs or services that were:

1. Performed on Oakland Unified School District equipment at various District schools or facilities.
2. Initiated and/or approved by authorized District personnel.
3. Accompanied with Job Work Order Tickets for labor performed showing:
 - a. scope of work performed,
 - b. Star Elevator personnel performing the work,
 - c. amount of time on the job,
 - d. signature of an OUSD on-site representative acknowledging the work was performed.
4. Accompanied with copies of vendor invoices for all materials billed.

We have attached a listing of the outstanding invoices for your information. These invoices represent legitimate work performed on District elevators and authorized by District personnel; there appears to be no valid reason for the District to continue delaying their payment. Without prompt payment of these past due invoices Star Elevator can no longer afford to respond to District requests for service and/or repair of District elevators.

Please call me or Tera Cavan, Star Elevator Accounting Manager, if you have any questions or need any further information.

Sincerely,

George Nieva
President

2011 AUG - 3 A 10:52

FACILITIES PLANNING
AND MANAGEMENT



CERTIFICATE OF LIABILITY INSURANCE

OP ID: LP

DATE (MM/DD/YYYY)

02/09/12

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER RBN & Associates, Inc. 303 East Wacker Dr Suite 1130 Chicago, IL 60601 Bruce Scodro	312-856-9400	CONTACT NAME:	
	312-856-9425	PHONE (A/C, No, Ext):	FAX (A/C, No):
		E-MAIL ADDRESS:	
		PRODUCER CUSTOMER ID #:	STARE-4
		INSURER(S) AFFORDING COVERAGE	
INSURED Star Elevator, Inc. 1300 Industrial Road, Suite 4 San Carlos, CA 94070	INSURER A : National Union Fire Ins. Co.		19445
	INSURER B : Hartford Underwriters Ins. Co.		30104
	INSURER C :		
	INSURER D :		
	INSURER E :		
	INSURER F :		

COVERAGES

CERTIFICATE NUMBER:

REVISION NUMBER:

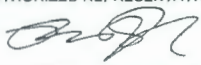
THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL INSR	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS			
B	GENERAL LIABILITY			13UENOJ6011	02/01/12	02/01/13	EACH OCCURRENCE \$ 1,000,000			
	<input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY						DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 300,000			
	<input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR						MED EXP (Any one person) \$ 10,000			
	GEN'L AGGREGATE LIMIT APPLIES PER:									PERSONAL & ADV INJURY \$ 1,000,000
	<input type="checkbox"/> POLICY <input checked="" type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC									GENERAL AGGREGATE \$ 3,000,000
										PRODUCTS - COMP/OP AGG \$ 3,000,000
										\$
	AUTOMOBILE LIABILITY						COMBINED SINGLE LIMIT (Ea accident) \$			
	<input type="checkbox"/> ANY AUTO						BODILY INJURY (Per person) \$			
	<input type="checkbox"/> ALL OWNED AUTOS						BODILY INJURY (Per accident) \$			
	<input type="checkbox"/> SCHEDULED AUTOS						PROPERTY DAMAGE (Per accident) \$			
	<input type="checkbox"/> HIRED AUTOS						\$			
	<input type="checkbox"/> NON-OWNED AUTOS						\$			
A	<input checked="" type="checkbox"/> UMBRELLA LIAB <input checked="" type="checkbox"/> OCCUR			BE038430832	02/01/12	02/01/13	EACH OCCURRENCE \$ 4,000,000			
	<input type="checkbox"/> EXCESS LIAB <input type="checkbox"/> CLAIMS-MADE						AGGREGATE \$ 4,000,000			
	<input type="checkbox"/> DEDUCTIBLE						\$			
	<input checked="" type="checkbox"/> RETENTION \$ 0						\$			
	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY						WC STATUTORY LIMITS OTH-ER			
	ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH)	Y/N	N/A				E.L. EACH ACCIDENT \$			
	If yes, describe under DESCRIPTION OF OPERATIONS below						E.L. DISEASE - EA EMPLOYEE \$			
							E.L. DISEASE - POLICY LIMIT \$			

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (Attach ACORD 101, Additional Remarks Schedule, if more space is required)
OAKLAND UNIFIED SCHOOL DISTRICT AND ITS DIRECTORS, OFFICERS, EMPLOYEES, AGENTS AND REPRESENTATIVES ARE ADDITIONAL INSURED WITH RESPECT TO GENERAL LIABILITY AS REQUIRED BY WRITTEN CONTRACT.

CERTIFICATE HOLDER

CANCELLATION

OAKLAND OAKLAND UNIFIED SCHOOL DIST. DEPT. OF FACILITIES PLANNING & MANAGEMENT ATTN: J. ESPOSTIO 955 HIGH STREET OAKLAND, CA 94601	SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.
	AUTHORIZED REPRESENTATIVE 

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							PRODUCTS - COM/OP AGG	\$ 3,000,000
								\$
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	<input checked="" type="checkbox"/> RETENTION \$ 0							\$
	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY						WC STATUTORY LIMITS	OTHER
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CERTIFICATE HOLDER

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OAKLAND	SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.
OAKLAND UNIFIED SCHOOL DIST. DEPT. OF FACILITIES PLANNING & MANAGEMENT ATTN: J. ESPOSTIO 955 HIGH STREET OAKLAND, CA 94601	AUTHORIZED REPRESENTATIVE

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PROFESSIONAL SERVICES CONTRACT ROUTING FORM

Project Information			
Project Name	District-wide Elevator Repair Project	Site	District-wide
Basic Directions			
Services cannot be provided until the contract is fully approved and a Purchase Order has been issued.			
Attachment Checklist	<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			
Contractor Name	Star Elevator	Agency's Contact	Paul Onorato
OUSD Vendor ID #	Z004017	Title	Project Manager
Street Address	1300 Industrial Road, Suite 4	City	San Carlos State CA Zip 94070
Telephone	650-631-3999	Policy Expires	2+2013
Contractor History	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
OUSD Project #	PR1208		

Term			
Date Work Will Begin	1-2-2012	Date Work Will End By <small>(not more than 5 years from start date)</small>	12-31-2012

Compensation			
Total Contract Amount	\$	Total Contract Not To Exceed	\$ 170,000.00
Pay Rate Per Hour (If Hourly)	\$	If Amendment, Changed Amount	\$
Other Expenses		Requisition Number	

Budget Information				
<small>If you are planning to multi-fund a contract using LEP funds, please contact the State and Federal Office before completing requisition.</small>				
Fund #	Resource Name	Org Key	Object Code	Amount
1414	Deferred Maintenance	9889000808	5670	\$ 85,000.00
1414	Deferred Maintenance	9889000840	5670	\$ 85,000.00

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.				
	Division Head	Charles Love	Phone	510-535-7081 Fax 510-879-3673
1.	Capital Program Contract & Accounting Manager			
	Signature		Date Approved	3-9-12
2.	General Counsel, Department of Facilities Planning and Management			
	Signature		Date Approved	3-12-12
3.	Assistant Superintendent, Facilities Planning and Management			
	Signature		Date Approved	
4.	President, Board of Education			
	Signature		Date Approved	