

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MILPITAS AUTHORIZING THE PURCHASE OF ELEVATOR MAINTENANCE SERVICES FROM OTIS ELEVATOR COMPANY THROUGH A PIGGYBACK AGREEMENT

WHEREAS, the National Intergovernmental Purchasing Alliance (NIPA), which is a cooperative purchasing organization with the specific purpose of reducing procurement costs by leveraging group volume, recently competitively bid a contract for elevator maintenance service, which was awarded exclusively to Otis Elevator Company (“Otis”), the City’s current provider of elevator maintenance services; and

WHEREAS, on July 27, 2011, the Metropolitan Government of Nashville and Davidson County, Tennessee, used the NIPA bid and entered into an agreement for the purchase of Full Service Elevator, Escalator, Chairlift and Platform Lift Maintenance and Repair with Otis (hereinafter “Original Agreement”); and

WHEREAS, Section I-2-3.07 of the Milpitas Municipal Code authorizes the City Council to enter into contracts without competitive bid when the Purchasing Agent determines that a piggyback purchase is in the City’s best interest of the City; and

WHEREAS, the NIPA’s solicitation that resulted in the Original Agreement was obtained and reviewed for compliance with the City’s Purchasing Ordinance by the Purchasing Agent; and

WHEREAS, there are no local suppliers or contractors who can provide the elevator maintenance services at competitive rates; and

WHEREAS, the City’s specifications for elevator maintenance services are the same as those listed in Original Agreement; and

WHEREAS, the price for Otis’ elevator maintenance services under the Original Agreement is estimated to be lower than if the City made the purchase pursuant to the City’s Purchasing Ordinance; and

WHEREAS, the price the City will pay for the elevator maintenance services from Otis will be the same price as in the Original Agreement.

NOW, THEREFORE, the City Council of the City of Milpitas hereby finds, determines, and resolves as follows:

1. The City Council has considered the full record before it, which may include but is not limited to such things as the staff report, testimony by staff and the public, and other materials and evidence submitted or provided to it. Furthermore, the recitals set forth above are found to be true and correct and are incorporated herein by reference.
2. The City Manager is authorized to execute a contract between the City and Otis Elevator Company for elevator maintenance services in an amount not to exceed \$6,46 for each year, which references the solicitation by NIPA and the terms, conditions and prices in the Original Agreement. A copy of the Piggyback agreement is attached to this Resolution as Exhibit A.
3. The City Manager is authorized to grant yearly increases pursuant to the piggyback agreement and the Original Agreement.

PASSED AND ADOPTED this ____ day of _____, by the following vote:

AYES:
NOES:
ABSENT:
ABSTAIN:

ATTEST:

APPROVED:

Mary Lavelle, City Clerk

Jose S. Esteves, Mayor

APPROVED AS TO FORM:

Michael J. Ogaz, City Attorney



PIGGYBACK AGREEMENT

This AGREEMENT is effective the 7th day of December 2011, by and between the City of Milpitas, a municipal corporation of the State of California (hereafter referred to as "CITY") and **Otis Elevator Company**, (hereafter referred to as "VENDOR") (collectively "PARTIES").

RECITALS

WHEREAS, VENDOR and the Metropolitan Government of Nashville and Davidson County, Tennessee, originally entered into an agreement for the purchase of Full Service Elevator, Escalator, Chairlift and Platform Lift Maintenance and Repair (hereinafter "Original Agreement"), on July 27, 2011; and

WHEREAS, the VENDOR desires to open the use of the Original Agreement to other municipalities; and

WHEREAS the practice of "Piggyback" procurement is specifically authorized by the City Municipal Code Sec. I-2-3.07 "Piggyback Procurement".

NOW THEREFORE, in consideration of the mutual covenants and conditions herein contained, the PARTIES agree as follows:

1. The PARTIES hereby incorporated by reference the solicitation, terms, conditions, and pricing of the Original Agreement excluding Exhibit C – National IPA Master Intergovernmental Cooperative Purchasing Agreement. All references to the Metropolitan Government of Nashville and Davidson County (METRO) shall be interpreted to refer to the CITY.
2. The term of the new agreement shall be for five (5) years effective January 1, 2012.
3. The annual not-to-exceed amount of these services is \$6,450.00.
4. This agreement is executed as of the date written above.
5. All references in the Original Agreement to "Tennessee" or "Tennessee law" shall refer to "California" or "California law."
6. The indemnity provision listed in paragraph five on page four of the "Clarifications" section of Otis' quote to the City of Milpitas is hereby deleted.
7. Otis Elevator agrees to provide the City of Milpitas standard insurance coverage as detailed in the attached Exhibit A – Insurance Requirement – General.
8. the following paragraphs are hereby deleted from the Original Agreement:
 - a. XVI. "Modification of Contract;"
 - b. XXIX. "Entire Contract;" and
 - c. XXXII. "Venue."
9. Entire Contract. This contract sets forth the entire agreement between the PARTIES with respect to the subject matter hereof and shall govern the respective duties and obligations of the PARTIES.

10. Venue. Any action between the PARTIES arising from this agreement shall be maintained in the courts of Santa Clara County, California.

APPROVED BY:

CITY OF MILPITAS

OTIS ELEVATOR

Thomas C. Williams, City Manager

Signature of Authorized Representative

Approved As To Form

Michael J. Ogaz, City Attorney

Approved As To Content

Eddie Loreda, Project Manager



EXHIBIT A INSURANCE REQUIREMENTS - GENERAL

Definition:

For purposes of this contract, the following definition applies: City of Milpitas includes the duly elected or appointed officers, agents, employees and volunteers of the City of Milpitas, individually or collectively.

Insurance Required:

No work shall be done under this Contract unless there is in effect insurance required by the Contract and under this section, and such insurance has been approved by the City, nor shall the CONTRACTOR allow any subcontractor to commence work on his subcontract until all insurance required of the subcontractor has been so obtained and approved. The CONTRACTOR shall maintain or cause to be maintained adequate workers' compensation insurance as required under the laws of the State of California, for all labor employed by him or by any subcontractor under him who may come within the protection of such worker's compensation laws of the State of California and shall provide or cause to be provided employer's general liability insurance for the benefit of his employees and the employees of any subcontractor under him not protected by such compensation laws.

Minimum Scope of Insurance:

Coverage shall be *at least as broad as*:

1. Insurance Services Office Form CG 0001 covering Commercial General Liability on an "occurrence" basis.
2. Insurance Services Office Form Number CA 0001 covering Automobile Liability, Code 1 (any auto).
3. Workers' Compensation insurance as required by the State of California and Employer's Liability Insurance.

Minimum Limits of Insurance:

Contractor shall maintain limits no less than:

1. **General Liability:** (Including operations, products and completed operations.)

\$1,000,000 per occurrence for bodily injury, personal injury and property damage. If Commercial General Liability insurance or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to this project/location or the general aggregate limit shall be twice the required occurrence limit.
2. **Automobile Liability:** \$1,000,000 per accident for bodily injury and property damage.
3. **Employer's Liability:** \$1,000,000 per accident for bodily injury or disease.

Deductibles and Self-Insured Retentions:

Any deductibles or self-insured retentions must be declared to and approved by the City. The City may require the Contractor to provide proof of ability to pay losses and related investigations, claim administration, and defense expenses within the retention.

Other Insurance Provisions:

The general liability and automobile liability policies are to contain, or be endorsed to contain, the following provisions:

1. **The City of Milpitas, its officers, officials, employees, and volunteers** are to be covered as insureds with respect to liability arising out of automobiles owned, leased, hired or borrowed by or on behalf of the contractor; and with respect to liability arising out of work or operations performed by or on behalf of the

Contractor including materials, parts or equipment furnished in connection with such work or operations. General liability coverage can be provided in the form of an endorsement to the Contractor's insurance (at least as broad as ISO Form CG 20 10 11 85), or as a separate owner's policy.

2. For any claims related to this project, the **Contractor's insurance coverage shall be primary** insurance as respects the City, its officers, officials, employees, and volunteers. Any insurance or self-insurance maintained by the City, its officers, officials, employees, or volunteers shall be excess of the **Contractor's insurance and shall not contribute with it.**
3. The Insurance Company agrees to **waive all rights of subrogation** against the City, its elected or appointed officers, officials, agents and employees for losses paid under the terms of any policy which arise from work performed by the Named Insured for the City. This provision also applies to the Contractor's Workers' Compensation policy.
4. Each insurance policy required by this clause shall be endorsed to state that coverage shall not be canceled by either party, except after **thirty (30) days' prior written notice (10 days for non-payment)** by certified mail, return receipt requested, has been given to the City. If Contractor's insurer refuses to provide this endorsement, Contractor shall be responsible for providing written notice to the City that coverage will be canceled thirty (30) days after the date of the notice or ten (10) days for non-payment.

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 City.

Verification of Coverage:

Contractor shall furnish the City with original certificates and amendatory endorsements affecting coverage required by this clause. All certificates and endorsements are to be received and approved by the City before work commences. However, failure to obtain the required documents prior to the work beginning shall not waive the contractor's obligation to provide them. The City reserves the right to require complete, certified copies of all required insurance policies, including endorsements affecting the coverage required by these specifications, at any time.

The Certificate with endorsements and notices shall be mailed to: City of Milpitas, Attention: Purchasing, 455 East Calaveras Boulevard, Milpitas California, 95035-5411.

Absence of Insurance:

If the CONTRACTOR allows the insurance to lapse, be cancelled, or be reduced below the limits specified in this article, the Contractor shall cause all work in the Project to cease and any delays or expenses caused due to stopping of work and change of insurance shall be considered CONTRACTOR's delay and shall not be considered to increase cost to the City or increase time in which the Project shall be completed.