

Fax - URGENT



Elevators Escalators

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To: Hilltop Community Executives
Attn: Al Siminelli
855-669-2103 ext. 682

FAX 877-665-6744

Date September 12, 2011

From Barbara

Re Copy of contract for Bellefontaine

Total Pages 11

Elevator Preventative Maintenance Agreement and Specifications

OMEGA ELEVATOR CORPORATION

(the "Contractor")

agrees to provide full preventative maintenance services in accordance with the Terms and Conditions specified within this agreement (the "Agreement") to:

Property (the "Owner"): **BELLEFONTAINE HOMEOWNER'S ASSOCIATION**

Address: **2400 SIXTH AVENUE**

City, State, Zip Code: **SAN DIEGO, CA 92101**

The vertical transportation systems and equipment shall be serviced as hereinafter described and in full accordance with the following Terms and Conditions.

PART I EQUIPMENT IDENTIFICATION: Vertical Transportation Equipment Identification (the "Elevator Equipment")

Quantity	Equipment Description	Landings / Openings
2	U.S. Geared Passenger Elevators	13 / 13

PART II GENERAL CONDITIONS

CONTRACT

A. Contract Term:

The term of this agreement shall be for three (3) years, from DEC 12th 2007 the "Commencement Date"), to DEC 11th 2007. This Agreement shall continue on a month-to-month basis once the original term has expired. Either party can terminate the month-to-month Agreement by giving the other party ten (10) days written notice.

B. Cancellation:

1. Owner/Property Manager reserves the right or option to cancel the unexpired term of this Agreement, with cause, by providing at least thirty (30) days' prior written notice to Contractor. However, in the event of repeated delay or non-performance by Contractor, Owner/Property Manager may at its option, terminate this Agreement without penalty upon two (2) days written notice.
2. If this Contract is canceled due to repeated delay, non-performance or non-compliance with the terms and conditions of said Agreement which includes, but shall not be limited to, Contractor violating or failing to abide by existing laws, codes, rules, and regulations set forth by all appropriate authorities where this work is to be performed, then Contractor shall reimburse to Owner/Property Manager the cost of any reasonable and necessary pre-maintenance services required by the successor elevator maintenance contractor. Elevator Advisors International, Inc. or any qualified elevator consulting company selected by Owner/Property Manager shall reasonably determine whether the pre-maintenance charges are proper and necessary.
3. In the event of the sale of the building or modernization of the existing Elevator Equipment, this Agreement may be terminated upon providing Contractor thirty (30) days' written notice.
4. Owner/Property Manager, at its option, may desire to give Contractor fifteen (15) days' written notice to rectify any items that do not comply with the Terms and Conditions of this Agreement. If the aforementioned notice is given and the work has not been completed within the prescribed time to Owner/Property Manager's reasonable satisfaction, Owner/Property Manager may either cancel this Agreement, as provided for earlier herein, or have another Contractor of his choice complete the work. If the latter option is chosen, Contractor agrees to reimburse Owner/Property Manager for all expenses incurred therefore; or Owner/Property Manager, at his discretion, may deduct the amount from any sum owed to Contractor.

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5. Owner/Property Manager reserves the right to inspect, or have his authorized representative make inspections and tests to ascertain that the requirements of this Agreement are being fulfilled and preventive maintenance is being performed within the schedules agreed upon.

C. Contract Assignment: Neither party may assign this Agreement without the prior written consent of the other party; provided, however, that Owner/Property Manager shall be entitled to assign this Agreement to any party which purchases or leases the Property from Owner/Property Manager.

PRICE

A. Contract Price: Owner/Property Manager shall pay Contractor upon receipt of Contractor's invoice, on or before the last day of each month during the term of this Agreement the following sum of:

(\$740.00) SEVEN HUNDRED FORTY AND NO/100 DOLLARS

for the faithful performance of the preventative maintenance services herein required of Contractor.

B. Price Adjustment: The contract price shall be subject to review and adjustment one year from the Commencement Date and yearly thereafter. Seventy-five percent (75%) of the contract price may be adjusted to reflect any increase or decrease in labor cost based on the straight time hourly rate and fringe benefits of the elevator mechanics in the area wherein the equipment covered by this Agreement is located. The remaining twenty-five percent (25%) may be adjusted to reflect any increase or decrease in material costs based on the Wholesale Metals & Metal Product Index as published by the United States Department of Labor, Bureau of Statistics. In no event shall the annual price increase for the preventative maintenance service specified herein exceed four percent (4%).

Labor Rate including Fringe Benefits: \$47.33 Date: 01-01-04

Wholesale Commodities Metals Index \$145.00 Date: 06-01-04

DESCRIPTION OF WORK

A. Contractor shall supply trained, qualified, and technically skilled journeymen directly employed and supervised by Contractor. All supervision, installed repair parts, consumable materials, equipment, tools, and each and every item of expense necessary for elevator maintenance, including all preventative maintenance, repairs, or parts and trouble call service shall be herein called the "Work".

CONTRACT SPECIFICATIONS

- A. Preventative Maintenance: Contractor shall regularly and systematically examine, clean, lubricate and adjust all Elevator Equipment. All pits and car tops will be cleaned a minimum of every two months. Elevator hoistway shall be cleaned once a year, and unexposed car and hoistway sills shall be cleaned a minimum of every six months. All indicator lights and signal gongs will be inspected and replaced as required, a minimum of once a month. Brake and sheave assemblies are to be cleaned and adjusted once each quarter. Machine room equipment and floors shall be painted a minimum of once per contract term and shall be completed within 180 days of the Commencement Date and maintained in a manner acceptable to Owner/Property Manager. All preventative maintenance and adjusting shall meet the minimum standards established by the Original Equipment Manufacturer of the Elevator Equipment.
- B. Repair and Replacement: Contractor shall repair or replace any worn and or defective Elevator Equipment including but not limited to the following:
5. Machine, worm, gear, thrust bearings, drive sheave, shaft bearings, brake pulley, brake coil, brake contact, linings and component parts.
 5. A.C. and D.C. motors and generators, motor windings, rotating elements, commutators, field coils, brushes, brush holders, bearings and SCR drive components.
 5. Selector and dispatching equipment, all relays, solid state components, resistors, condensers, transformers, contacts, leads, dashpots, timing devices, computer devices, steel selector tape, traveling cable, other mechanical or electrical operating equipment, including printed circuit boards.

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4. Governor, governor sheave and shaft assembly, bearings, contacts, governor jaws, governor cable and car safeties.
5. Deflector or secondary sheave, bearings, car and counterweight guide rails, car and counterweight guide rail alignment, top and bottom limit switches, compensating sheave assembly, counterweight, hoist ropes, compensating ropes and chains, load weighing equipment, car frame, car safety mechanism, platform and all car and counterweight shoes or roller guides.
6. Door operator, clutch assemblies, pick up rollers, interlocks, hoistway door hangers, bottom door guides, safety edges, door detectors, electric eyes, astragals, auxiliary door closers, position indicators, push buttons, key switches, hall lanterns, access switches, inspection stations, car top fans, emergency light unit and battery, all hoist way lighting and guards, seismic switches and ring-string earthquake detection units, elevator telephones, and all wiring between the cab and elevator machine room that is applicable to the elevator communication systems
7. Hydraulic power unit assembly complete including elevator pump, motor, motor windings, plunger, plunger packing, hydraulic oil, V-belts, strainers, valves, mufflers, victaulic fittings, flexible feed line hose, seals, pit oil return units, oil cooling units, hydraulic elevator emergency power backup equipment, and all exposed hydraulic equipment.

C. Parts Inventory Requirements: Contractor agrees to the following requirements and authorization of parts used in the Work:

1. Major Components Parts (Electrical): Should field coils and armatures be rewound or repaired by a qualified motor rewind shop, Contractor must cause the repairs to be completed within five (5) working days.
2. Major Component Parts: If Contractor does not have motor and generator armatures, machine gears, frames, sheaves, cabs, rails and similar mechanical components in stock, he must provide Owner/Property Manager within two working days of the source for the repair or replacement, as well as the approximate schedule to complete the repairs.
3. Special Electrical Parts: Contractor acknowledges that elevator control systems contain solid state printed circuit modules. Contractor agrees to maintain, in inventory, a sufficient amount of modules and component parts to replace and or repair any of these units should failure occur. SCR Drive Components are to be inventoried in Contractor's warehouse.
4. Job Site Elevator Inventory: Contractor will maintain a supply of contacts, coils, generator and motor brushes, car and hall pushbuttons, lantern gongs, door detectors, safety edges, photo eyes, lubricants, wiping cloths, and minor parts in each elevator machine room, properly stored in an approved parts cabinet.
5. Spare Parts Inventory: Contractor will maintain a supply of genuine Original Equipment Manufacturer's replacement parts in their warehouse inventory. This inventory will include, but not be limited to, generator rotating elements, door operator motors, brake magnets, generator and motor brushes, controller switch contacts, selector tapes, door hangers, rollers, and hoistway limit switches. Such replacement parts will be kept in warehouse inventory or available from their manufacturing facilities. Regardless of the location of the stored parts, they shall be available on the jobsite within forty-eight (48) hours from the time of need.
6. Replacement Parts Policy: Contractor will not alter equipment parts and O.E.M. design with other manufacturers' parts or design unless O.E.M. has discontinued the item and the parts are no longer available from the OEM or other Owner/Property Manager approved suppliers. Parts manufactured by companies other than the O.E.M., but supplied to the O.E.M. as part of their overall product, may be acceptable if said part is of a similar design and character. Relays, selector parts, coils, rollers, touch buttons, proximity edges, and various other parts are duplicated by other nationally recognized manufacturers and, upon written authorization from Owner/Property Manager or Owner/Property Manager's representative, may be used in lieu of the O.E.M. parts.
7. Contractor agrees to maintain a diagnostic tool and one set of spare boards, as required, on the job site or in Contractor's local branch office for the entire length of the Agreement. Any boards used out of stock will be replaced within twenty-four (24) hours.

D. Modifications Approvals: Should Contractor request or wish to make any change, modification, or addition to the existing Elevator Equipment, Contractor must submit a written "Request to Modify" proposal to Owner/Property Manager for approval. A "Request to Modify" must state the reason why Contractor wishes to change a component. Complete information of the new proposed component and a guarantee of responsibility by Contractor for said component change is required.

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E. Code Testing Required: Contractor shall perform all State, City, Local and ANSI A17.1 required testing. Such testing shall include, but not be limited to, full load, full load emergency power, no load, and hydraulic load tests. Only those Codes that are in force as of the Commencement Date of this Agreement are applicable.

1. ANSI/ASME A17.1 (Latest edition): Contractor shall test Fireman's Return Phase I and II a minimum of once a month and notify Owner/Property Manager prior to conducting such test. Any and all required corrections shall be the responsibility of Contractor and shall be corrected at no additional charge to Owner/Property Manager. The results of these tests shall be submitted in writing to Owner/Property Manager within 30 days after the test is completed.
2. Earthquake Derailment Device Testing: Contractor shall test earthquake derailment and seismic devices a minimum of once a year. Notification shall be given to Owner/Property Manager prior to such test. Any and all required corrections shall be the responsibility of Contractor and shall be corrected at no additional charge to Owner/Property Manager.

F. Performance Requirements: Contractor agrees to maintain the following minimum requirements of each elevator as described per manufacturer's original installation criteria:

1. Floor to Floor Time: (In Seconds)
Floor to floor time shall be measured from the time the elevator starts to the time the elevator stops during a one floor run in either direction and under any load condition.
2. Door Open Time: (In Seconds)
Door opening times are measured by the distance of the door travel, less 1" for center-opening doors and 2" for side-opening doors from each end of the door travel.
3. Door Close Time: (In Seconds)
Not to exceed 30 pounds of kinetic force.
Door closing times are measured by the distance of the door travel less 1" for center-opening doors and 2" for side-opening doors from each end of the door travel.
4. Car/Hall Call Dwell Time: (In Seconds)
Standing door open times are measured from the time the doors are fully open, without demand, until the doors start to close.
5. Nudging Close Time: (In Seconds)
Nudging close time is measured the same as the door close time.
6. Leveling Accuracy
3/8" for hydraulic elevators and open loop traction elevators.
1/4" for closed loop traction elevators.
The accuracy of leveling shall be plus or minus the 3/8" and 1/4" mentioned above under all load conditions. Leveling shall be consistent with OEM installation and Code Requirements.
7. Variance from the rated contract speed, regardless of load conditions shall not exceed five percent (5%) for open loop systems and two percent (2%) for closed loop systems.
8. Maintain vertical alignment of guide rails to a tolerance of 1/16 in. at 100'.

EAI Standards	Elevators #1 and #2
Up Speed:	200
Down Speed:	200
Floor to Floor Up:	6.0
Floor to Floor Down:	6.0
Door Open Time:	2.6
Door Close Time:	3.7
Door Close Pressure:	Under 30
Car Call Dwell Time:	4.0
Hall Call Dwell Time:	6.0
Re-Open Time:	1.5
Nudging Time:	30-40
Nudging Close Time:	4.6
Door Hold:	50-60

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In accomplishing the above requirements, Contractor shall maintain a comfortable elevator ride with smooth acceleration, retardation and a soft stop. Door operation shall be quiet and positive, with smooth checking at the extremes of travel. Contractor shall assign a Supervisor to examine all Elevator Equipment yearly as a minimum requirement. Results of the inspection shall be submitted to Owner/Property Manager within thirty (30) days from completion of Supervisor's inspection.

G. Call-Back Answering: (Check one of the following)

Note: This contract does not allow for any travel time billing. Any extra billings to the customer shall only reflect time spent on the job site.

The Contractor will furnish callback service:

- During regular working hours of the regular working days of the trade. Any calls after this time, the contractor will absorb the straight time and the customer will pay the premium time rate as specified herein.
- Twenty-four (24) hours a day, seven (7) days per week at no additional cost to Owner/Property Manager.

Response Time: Contractor shall have a mechanic on the Property premises within one (1) hour of any call-back request made by Owner/Property Manager or Owner/Property Manager's authorized representative. In the event of an "occupied" condition, Contractor shall make every effort possible to respond directly and within thirty (30) minutes of said "occupied" call.

H. Minimum Man Hours At Property Premises:

1. Contractor shall furnish a mechanic to provide preventive maintenance services at the premises for a minimum of Four (4) hours per calendar month. Call-backs and non-scheduled repair labor are not considered service time. Hours shall be equally distributed and services performed on a Twice a month basis.

Failure to provide the preventative maintenance services set forth in this Section H-1, shall be cause for retention of monthly fees by Owner/Property Manager equal to the reduction of Contractor's services and shall continue until full, normal service is restored. Contractor may choose to make up time lost at the conclusion of any period of interruption of service and be reimbursed for same, if agreed to in writing by Owner/Property Manager. Time tickets for routine maintenance shall be presented to the appropriate on site personnel or building representative at the conclusion of each visit and shall only show the time spent for preventative maintenance. Any other work completed, such as repairs or call-back service, shall be listed and accounted for on a separate time ticket.

It is understood that such minimum service hours do not limit labor required to maintain the Elevator Equipment in top running condition.

I. Hours and Manner of Work:

1. Regular Working Hours: All preventive maintenance service, repairs, routine adjusting and service procedures will be performed during regular working hours of regular working days of the elevator trade referring to the hours of 8:00 a.m. to 4:30 p.m., Monday through Friday. If Owner/Property Manager demands that needed two men repair work be completed during overtime hours, Contractor will bill the difference between their straight time billing rate and the appropriate overtime billing rate. Notification to Owner/Property Manager must be made prior to removal of the elevators from normal service for maintenance, testing and adjustment.
2. Contractor and Owner/Property Manager shall agree which days of the week will be Contractor's normal service days. Any changes to the schedule or working hours noted above must be mutually agreed upon in writing between both parties.

J. Time Tickets and Machine Room Logs: Contractor shall properly fill out a time ticket each time Contractor visits the Property premises. The time ticket shall include the following minimum information:

1. Date
2. Contractor's assigned job identification number

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3. Building address
4. Time spent traveling to the jobsite
5. Time spent on the jobsite
6. Total Time
7. Description of work completed
8. Material(s) provided
9. Additional costs (zone, cartage, etc.)

All entries shall be legible and complete. All time tickets are to be signed by designated building personnel and a legible copy of the signed time ticket shall be left with Owner/Property Manager's designated personnel.

Contractor shall provide and keep current, dated on a per visit basis, the following logs which will be located in the appropriate elevator machine rooms.

1. Maintenance Log: This log will be provided for each elevator. Contractor will check off all work completed during each maintenance visit.
2. Call-Back Log: This log will be provided for each elevator. Each call-back answered shall be logged on the appropriate machine room call-back log including corrective action.

All repair work completed on each elevator will be listed on the call-back log. Any special logs provided by Owner/Property Manager shall also be adhered to by Contractor.

IN LIEU OF THE TIME TICKETS MENTIONED IN PARAGRAPH "J", ITEMS 1-9, CONTRACTOR MAY USE THEIR PAPERLESS SYSTEM. CONTRACTOR SHALL PROVIDE, ON A MONTHLY BASIS, THEIR MONTHLY COMPUTER REPORTS SHOWING ALL CALL-BACKS AND PREVENTATIVE MAINTENANCE VISITS FOR ONE MONTH. SAID REPORTS SHALL BE PROVIDED TO PERSONS DESIGNATED BY OWNER/PROPERTY MANAGER OR MANAGER, AND WILL INCORPORATE AS A MINIMUM THE INFORMATION LISTED IN PARAGRAPH "J", ITEMS 1-9, OF THIS AGREEMENT.

Contractor shall be required to review twice a year as a minimum with Owner/Property Manager's designated representative the call-back logs for this property. It is Contractor's responsibility to make arrangements for such a review.

K. Wiring Diagrams: The as built wiring diagrams for the Property are the property of Owner/Property Manager and are to remain on the jobsite at all times.

Any circuit changes, upgrades or modifications to the system shall be noted on the wiring diagrams. Failure to comply with this requirement may result in termination of this Agreement.

If the Contractor's services are terminated, Contractor must provide Owner/Property Manager with the corrected, updated wiring diagrams at no additional cost. Final payment to Contractor will be withheld until this requirement is met.

Should Owner/Property Manager require legal assistance to acquire the correct and updated wiring diagrams from the terminated Contractor, all costs associated with this effort will be borne by the terminated Contractor.

L. Removal of Rubbish and Used Parts:

1. Contractor shall remove from the Property premises all rubbish generated in performing the work specified by this Agreement.
2. Any part or component of the Elevator Equipment that is replaced under the terms of this Agreement shall become the property of Contractor and, as such, shall be promptly removed from the Property premises at Contractor's expense.
3. Contractor agrees to dispose of the aforementioned equipment and rubbish in accordance with any and all applicable Federal, City, State and Municipal environmental regulations. Contractor further accepts all liability that may result from disposing of said material(s) including any hazardous materials. Material(s) shall not be disposed of at the Property premises.

M. Owner/Property Manager's Right to Inspect and Require Work: Owner/Property Manager and/or Owner/Property Manager's authorized representative reserves the right to make inspections and tests to

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ascertain that the requirements of this Agreement are being fulfilled. Upon request, all logs and trouble call history shall be provided for Owner/Property Manager's review.

N. Policies: Contractor shall provide at all times adequate and expert managerial and administrative supervision for its employee(s) that provide preventative maintenance support at the Property premises. Contractor agrees that all persons working for or on behalf of Contractor whose duties bring them upon the Property premises shall obey rules and regulations that are established by Owner/Property Manager and shall comply with the reasonable directions of its officers and representatives. Contractor shall provide sufficient back up in times of staff shortages due to vacation, illness and inclement weather. All service personnel must wear clean and presentable uniforms with Contractor's name and employee's name. At the discretion of Owner/Property Manager, it may also be required that proof of employment in the form of laminated identification badge containing the individuals name, signature and recent photograph be worn. Such badges shall be provided by Contractor at no additional charge if requested by Owner/Property Manager.

O. Work Not Covered By Contract: Contractor shall not be required under this Agreement to install new attachments as may be recommended or directed by insurance companies, Federal, State, Municipal or Governmental authorities, subsequent to the date of this Agreement, unless compensated for such installation. Contractor shall not be responsible for the following work:

1. Repairs because of negligence, accident, misuse or vandalism of the Elevator Equipment by anyone other than Contractor, his employees, subcontractors, servants or agents, or other causes beyond Contractor's control except ordinary wear and tear.
 - a. Any misuse call, act of God, or any other charge that will initiate extra billing from the contractor to Owner/Property Manager must be approved by Owner/Property Manager or Owner/Property Manager's representative prior to the work being started. These billings will be at the full rate noted in Paragraph S below, or the yearly escalated billing rate that may be applicable.
2. Repair or replacement of building items, hoistway or machine room walls and floors, car enclosures, car finish, floor materials, hoistway entrance frames, doors and sills, signal faceplates, underground feedlines, underground cylinders, wiring or conduits, smoke and heat detectors.
3. Main line and auxiliary disconnect switches, fuses and feeders to the control panels.
4. 110 volt lamps for the car and machine room illumination.
5. Safety Tests, other than those specified herein.
6. Servicing of the following Elevator Equipment: car enclosures (including removable panels, door panels, car gates, plenum chambers, hung ceilings, light diffusers, light tubes and 110 volt bulbs, mirrors and carpets, hoistway enclosures, hoistway gates, doors, frames, and sills).

Contractor must notify Owner/Property Manager should any of the above items need replacement. Owner/Property Manager's approval of any additional work must be in writing as described in Section D of this Agreement.

In the event modifications and additions have been made to the Elevator Equipment by other contractors and because of such modifications and/or additions, such Elevator Equipment is not operating properly, or does not meet appropriate code requirements, Contractor shall not be responsible to correct said alterations or modifications without compensation. Contractor will maintain the existing system to its as-built design. Contractor will conduct tests of these circuits or alterations in the presence of Owner/Property Manager's representative to determine code compliance and proper operation.

P. Facilities and Utilities Furnished by Contractor:

1. All standard expendable or consumable maintenance items.

Q. Furnished by Owner/Property Manager:

1. Sanitary facilities.
2. Electrical power for small tools in the work area.

R. Performance Schedule and Sequence of Work:

1. Contractor shall commence maintenance on each piece of Elevator Equipment described in Part I of this Agreement on the Commencement Date.
2. Contractor shall perform additional work as requested from time to time by Owner/Property Manager's written authorization. Owner/Property Manager will provide a description of additional work to be performed. Contractor will provide an estimate of cost to perform the additional work.

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Contractor's authorization to commence such additional work shall be a signed written proposal executed by Owner/Property Manager.

- S. **Billing Rates:** The following billing rates were applicable at the time of execution of this Agreement. Escalation of these rates shall be governed by Part II, Price, Paragraph B of this Agreement. Contractor is required to submit new billing rates as part of their yearly escalation, provided the rates listed below are changed because of the escalation.

Billing rates	Mechanic	Helper	Team Rate
Straight Time	139.00	97.00	240.00
Overtime	236.00	164.00	400.00
Double Time	270.00	194.00	464.00

Premium Time will be the difference between Straight time and Overtime or Double Time.

Note: Any billing for this Agreement will be based on time spent at jobsite. Travel time will not be included in any billings to Owner/Property Manager.

Contractor shall submit time tickets or their worksheets for validation by Owner/Property Manager covering chargeable time by Contractor's personnel on the Property premises at time of work performance. Contractor shall check in and out with the designated building personnel for each visit.

T. **Precedence:** In case of express conflict between parts of this Agreement, specifications, drawings or exhibits, the order of precedence shall be as follows:

1. Signature Document.
2. Exhibits.

In the event of an express conflict between the documents, which are part of this Agreement, Contractor shall notify the Owner/Property Manager within seven (7) calendar days from the Agreement Commencement Date.

U. **Salaries and Expenses Relating to Contractors Employees:** Contractor shall pay all salaries and expenses including all Federal, Social Security taxes, Federal and State unemployment taxes and any other taxes relating to employees used in the performance of this Agreement. Contractor further agrees to comply with all Federal, State, local wage, hour, and licensing laws applicable to its employees or other personnel furnished under this agreement.

V. **Contractor's License:** Contractor certifies that it is licensed in the state and jurisdiction the service(s) specified herein are to be performed and that the license will be maintained current and valid throughout the life of this Agreement.

W. **Notices:** Any notices required to be given herein shall be addressed (Certified Mail, Return receipt requested) as follows:

To Contractor: Omega Elevator Corporation
7968 Arjons Drive Suite C
San Diego, CA 92126
Attention: Branch Manager

To Property: Bellefontaine Community Owners Association
2400 Sixth Avenue, Unit 503
San Diego, CA 92101
Attention: President

X. **Attorney Fees:** In the event litigation is commenced by either party hereto against the other in connection with the enforcement to any provisions of this Agreement, the prevailing party shall be paid by the losing party all court costs and/or other expenses of such litigation, including attorneys' fees in a reasonable amount to be determined by the Court.

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Y. Entire Agreement: This agreement constitutes the entire agreement between the parties and supersedes any previous oral or written agreements between the parties with respect to the subject matter hereof. This Agreement may not be modified, waived, or changed except in writing, and signed by both parties.

Z. Waiver of Breach: A waiver by either party of any term or condition of this Agreement in any instance shall not be deemed as a waiver of such term or condition for the future or of any subsequent breach thereof. All remedies, rights, undertakings, obligations or agreements contained in this Agreement shall be cumulative and none of them shall be in limitation of any other remedy, right, obligation, or agreement of either party.

AA. Severability: If any provision of this Agreement or any portion or provision hereof applicable to any particular situation or circumstance is held invalid, the remainder of this Agreement or the remainder of such provision (as the case may be), and the application, shall not be affected thereby.

BB. Time of the Essence: Time is of the essence under this Agreement, as to each provision in which time of performance is a factor.

CC. Applicable Law: This agreement shall be governed by the laws of the state in which the services will be performed and the courts of that state shall have sole jurisdiction to settle any dispute arising under this Agreement.

DD. Indemnification and Insurance

1. Contractor agrees to protect, indemnify, defend and hold harmless Owner/Property Manager, its parent subsidiaries, affiliates, successors and assignees and each of their respective directors, officers, agents, employees and property managers, from any and all losses, claims, causes of actions, demands, payments, damages, injuries, expenses or liabilities, whatsoever, including attorney fees and costs arising from any negligent act or omission, or breach of this agreement, by Contractor, or its employees, subcontractors, agents, representatives, or suppliers. Contractor's obligation to indemnify shall not be effected or excused by any contributing fault or negligence of Owner/Property Manager, except that Contractor shall not be required to indemnify Owner/Property Manager for that portion of any claims, loss or injury arising from Owner/Property Manager's negligent acts or omissions.
2. Contractor, at its sole expense, shall carry and maintain throughout the term of the contract the insurance described below. The form of the insurance shall at all times be subject to the Owner/Property Manager's reasonable approval. The Owner/Property Manager requires insurance carriers to maintain during the contract term a Best Key Rating of A- or higher and be licensed to do business where the contract work is done. Excess liability policies must follow form with primary liability policies.
 - a. Commercial General Liability with minimum limits of not less than **\$ 1,000,000.00** per occurrence for bodily injury, including death and property damage liability. Such insurance shall include coverage for contractual liability, personal injury and broad form property damage, and provide coverage on an "occurrence" rather than a "claims made" basis.
 - b. Comprehensive Automobile Liability Insurance covering all owned, non-owned and hired vehicles used in connection with the performance of the services with limits of liability of not less than \$ 1,000,000.00 combined single limit bodily injury and property damage.
 - c. Standard Worker's Compensation Insurance covering all employees, contractors, agents, representatives and servants of Contractor engaged in providing the services with policy amounts and coverage in compliance with the laws of the jurisdiction in which the services will be performed and Employer's Liability Insurance with limits not less than \$ 1,000,000.00 per occurrence.
3. Insurance coverage shall extend to the entire time the employees, contractors, agents, representatives and servants of Contractor are at the property. All policies must note that the Owner/Property Manager will be given thirty (30) calendar days advance notice via U.S mail of any policy changes, cancellations, or any reduction of insurance limits. The policies evidencing the insurance coverage required under subsection 2a above shall be endorsed to name Owner/Property Manager as additional insured. It is expressly understood and agreed that such insurance coverage shall not extend to that portion of any claim, loss or injury

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arising from Owner/Property Manager negligent acts or omissions or intentional misconduct (nor defense costs associated with such claims), but only to the extent of liability arising from the negligent acts or omissions or intentional misconduct of the Contractor.

- 4. Within ten (10) calendar days after the award by the Owner/Property Manager and before the start of the work, Contractor shall submit a Certificate of Insurance showing that all insurance requirements have been met. If any policy expires during the term of the contract, it shall automatically be renewed and a new Certificate of Insurance sent. Owner/Property Manager may withhold payment under this contract in the absence of having a valid current Certificate of Insurance on file.

EE. Claims Assistance: Upon written or verbal notification by Owner/Property Manager of any alleged injury involving an elevator maintained by Contractor, Contractor shall, within twenty-four (24) hours after receipt of such notification, examine the operation of the subject elevator. Within seven (7) days after Contractor has examined the subject elevator(s), should it be necessary and should the Owner/Property Manager request it, Contractor shall provide Owner/Property Manager with a proposal to repair the elevator(s).

FF. Neither party to this agreement shall be responsible to the other for any special, indirect or consequential damages arising from this agreement.

PART III. SIGNATURE PAGE

Accepted by:

Accepted by:

Contractor: OMEGA ELEVATOR CORP.

Owner/Property Mgr: Hilltop Comm. Exces.

Name: Sean M. Kelly

Name: DAVID J. BROWN

Title: Vice President

Title: President

Signature: [Handwritten Signature]

Signature: [Handwritten Signature]

Date: 11-20-04

Date: 12-10-04