

AGREEMENT NO. 2021-02

Elevator Maintenance Agreement

THIS ELEVATOR MAINTENANCE AGREEMENT (the "Agreement"), is entered into and effective as of March 1, 2021 (the "Effective Date") by and between (i) PHOENIX MODULAR ELEVATOR, INC., an Illinois corporation with offices and facilities in Mt. Vernon, IL (the "Company"), and (ii) County of Franklin, with facilities in Benton, Illinois (the "Owner"). The Company and the Owner are collectively referred to as the "Parties" and each individually as a "Party".

RECITALS

WHEREAS, the Owner desires, subject to the terms and conditions set forth below, to engage the Company to provide elevator maintenance services at the Owner's Campbell Building (the "Facility") for the benefit of the Owner.

WHEREAS, the Company desires, subject to the terms and conditions set forth below, to provide the aforementioned services for the benefit of the Owner.

AGREEMENT

NOW THEREFORE, the Company and the Owner agree as follows:

1. Independent Contractor Status. The Company is, and shall be considered for all purposes of this Agreement, an independent contractor. Nothing in this Agreement is intended to create any offer of employment, partnership, joint venture, or agency by the Owner to the Company or its employees. The Company has no authority to enter into any contracts or agreements on behalf of the Owner, except as specifically provided for under this Agreement.

2. Provision of Services.

A. Engagement. The Owner hereby engages the Company to provide the elevator maintenance services identified in Exhibit A (collectively, the "Work"), and the Company accepts such engagement. The Company shall perform all Work (i) in a good, workmanlike, and reasonably timely manner, (ii) in accordance with this Agreement, and (iii) in accordance with generally accepted industry standards and practices applicable to such Work. The Company shall maintain the Equipment (defined below) using skilled, licensed elevator mechanics and helpers who are employees of the Company and who are supervised by the Company. Such mechanics and helpers shall employ commercially reasonable care to ensure that the Equipment is maintained in proper and safe operating condition.

B. Limitations. All repairs and replacements covered by this Agreement are limited to those caused by ordinary wear and tear from normal use. The Company shall not be required (as part of the Work) to repair or replace, at its cost, any Equipment parts or components due to (i) negligent use or misuse of the Equipment by parties other than the Company, (ii) acts of God, or (iii) any other causes beyond the control of the Company. Further, the Company shall not be required to (as part of the Work), at its cost, alter existing parts or components of the Equipment, perform modernizations, or make replacements with parts of changed design when recommended or directed by insurance or governmental authorities or due to obsolescence of such parts and components.

C. Hours of Service. The Company will provide normal maintenance and repair work during regular working hours (8:00 am – 4:30 pm, Monday through Friday, except holidays). Emergency service will be available 24 hours per day, 7 days a week.

E. Documentation. The Company shall be responsible for keeping an accurate record of the amount of materials used and labor hours undertaken with respect to any additional services performed for the Owner beyond the scope of the Work (specified herein) performed, and shall provide the Owner with invoices in accordance with the Company's standard billing procedures.

3. Owner's Responsibility.

A. Equipment Malfunction. The Owner shall notify the Company immediately upon malfunction of the Equipment and shall place the Equipment out of service.

B. Access to Equipment. The Owner shall provide the Company with unrestricted, safe access to all areas of the Facility in which any parts of the Equipment are located, and shall keep all machine rooms and pit areas clean and free from water, stored materials, and debris.

C. Safe Workplace. The Owner shall provide a safe workplace for the Company's maintenance technicians and helpers, and shall remove any waste or hazardous materials in accordance with applicable Laws (defined below).

D. Machine Room. The Owner shall provide a suitable machine room, including, without limitation, secured doors, waterproofing, lighting, ventilation, and heat to maintain the room at a temperature range of 50 degrees (F) (minimum) to 90 degrees (F) (maximum).

4. Compensation to Company. The Owner shall pay to the Company, as compensation (the "Compensation") for providing the Work (and additional services, if applicable), the fees set forth in Exhibit B.

5. Term and Termination.

A. Term. The term of this Agreement shall commence on the Effective Date and shall continue (unless terminated as set forth below) for a period of one (1) year. The Agreement shall automatically renew for additional 1-year periods unless terminated by either Party in writing at least thirty (30) days in advance of the renewal date.

B. Termination. If either Party defaults under this Agreement, and fails, within a 10-day period following receipt of written notice from the non-defaulting Party, to cure and continue to cure such default, the non-defaulting Party may, upon providing written notice to the defaulting Party, promptly terminate this Agreement. Notwithstanding the foregoing, the Company may immediately terminate this Agreement, upon written notice to the Owner, if the Owner defaults upon the payment terms (to the Company) hereunder. In the event of termination pursuant to this Section 5(B), the Owner shall pay the Company any Compensation due and payable for any Work performed up to and including the time of termination, notwithstanding the fact that either Party may have a claim for damages against the other Party.

6. Insurance. While this Agreement is in effect, the Company shall maintain commercially reasonable insurance, including, without limitation, workman's compensation and commercial general liability ("Insurance"), customary for the industry in which it operates. The insurance coverage described in this Section 6 shall be acquired from insurance companies lawfully authorized to do business in the jurisdictions where the Work is being performed.

7. Indemnification.

A. Indemnification by Company. The Company shall defend, indemnify and hold harmless the Owner, its affiliates, and its respective officers, employees, agents, representatives, successors and permitted assigns (collectively, the "Related Parties") from and against all losses, damages, liabilities, deficiencies, actions, judgments, interest, awards, penalties, fines, costs or expenses of whatever kind (including reasonable attorneys' fees) (collectively, "Losses") to the extent resulting from:

- (1) bodily injury or death of any person, or damage to real or tangible personal property (whether owned or leased) resulting from the negligent acts or omissions of the Company or its Related Parties with respect to the performance of the Work.

B. Indemnification by Owner. The Owner shall defend, indemnify and hold harmless the Company and its Related Parties from and against all Losses to the extent resulting from:

- (1) bodily injury or death of any person, or damage to real or tangible personal property (whether owned or leased) resulting from the acts or omissions of the Owner or its Related Parties with respect to the Equipment or Work;
- (2) the Owner's breach of any obligation under this Agreement; and
- (3) the failure of the Owner or its Related Parties to comply with any federal, state, or local Laws applicable to the performance of this Agreement.

Except as otherwise set forth herein, neither Party shall be liable for consequential, special, or punitive damages to the other Party.

8. Confidentiality. The Parties agree (a) to treat the existence and terms of this Agreement and all information, in any form or medium, that relates to the business of the other Party and its Affiliates, and all other information related to the other Party and its Affiliates which is not readily available to the public (collectively, the "Confidential Information") as strictly confidential; (b) not to disclose Confidential Information or permit it to be disclosed, in whole or part, to any third party without the prior written consent of the other Party in each instance; and (c) not to use any Confidential Information for any purpose except as required in the performance of the Work.

9. Compliance with Laws. Each Party shall be responsible for the compliance with all Laws (defined below) applicable to this Agreement, as well as any damages, fines, or penalties, or arising out of any failure to comply with such Laws. For purposes of this Agreement, "Laws" shall mean all laws and regulations applicable to the performance of this Agreement, including, without limitation, municipal and county laws, ordinances and regulations now in effect or as amended, and federal and state laws and regulations.

10. General Provisions.

A. Severability. In the event that any term or provision of this Agreement shall be declared by any court of competent jurisdiction to be unreasonable or invalid, then any such unreasonable terms or provisions shall be modified and enforceable to the extent deemed reasonable by such court; and any such invalidity shall not affect any other term or provision of this Agreement, all of which remaining terms and provisions shall continue in full force and effect.

B. Applicable Law; Dispute Resolution. This Agreement shall be governed by, and construed in accordance with, the laws of the State of Illinois, without giving effect to any choice or conflict of law provisions or rule (whether of the State of Illinois or any other jurisdiction) that would cause the application of laws of any jurisdiction other than those of the State of Illinois. Any legal proceeding instituted regarding a dispute between the Parties regarding this Agreement shall be resolved through binding arbitration, using one or more arbitrators (the number of which shall be jointly determined by the Parties) who are members of the American Arbitration Association ("AAA"). Such arbitration shall be conducted in Jefferson County, IL or the closest location within Illinois where AAA arbitration proceedings are available. The arbitrator(s) shall determine, at the conclusion of the arbitration, what (if any) reimbursement of legal fees, arbitration fees, collection fees, and any other fees or costs related to the dispute resolution are to be paid by one Party to the other Party.

C. Waiver of Breach. The waiver by a Party of any breach of a provision of this Agreement shall not operate, or be construed as, a waiver of any subsequent breach thereby.

D. Assignment. Neither Party shall assign, mortgage or pledge (collectively, an "Assignment") any rights, or delegate or subcontract any obligations under this Agreement or pertaining to the Work without the other Party's prior written consent. An Assignment in violation of the foregoing shall be deemed null and void. Subject to the limits on an Assignment stated above, this Agreement shall inure to the benefit of, be binding upon, and be enforceable against, each of the Parties and their respective successors and assigns.

E. Amendment. This Agreement may not be altered, amended or modified, except in writing signed by each of the Parties hereto.

F. Entire Understanding. This Agreement (including all related exhibits) constitutes the entire understanding of the Parties with respect to the subject matter of this Agreement and supersedes all prior agreements and understandings, whether in writing or oral, relating to the subject matter of this Agreement.

G. Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

H. Notices. Any notice or other communication required or permitted to be given to a Party pursuant to this Agreement shall be in writing and shall be determined to have been duly given when delivered personally, by email, or sent by United States certified or registered mail, return receipt requested, postage prepaid, as follows:

To Company: Phoenix Modular Elevator, Inc.
Attn: Allison Allgaier, President
4800 Phoenix Drive
Mt. Vernon, IL 62864
(Tel) 618-244-2314
aallgaier@phoenixmodularelevator.com

To Owner: County of Franklin
Attn: Gayla Sink Prather
Campbell Building
901 Public Square
Benton, IL 62812

(Tel) 618-439-3743
gaylasink@franklincountyil.org

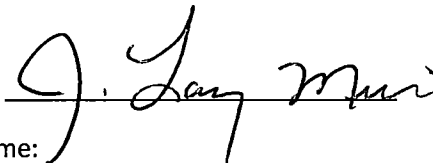
IN WITNESS WHEREOF, the Parties have executed this Elevator Maintenance Agreement on the date first above written.

Phoenix Modular Elevator, Inc.
(The Company)

By: _____ *See THE NEXT PAGE*

Name: Allison Allgaier
Title: President

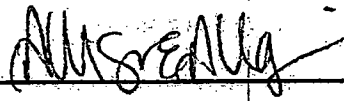
County of Franklin
(The Owner)

By: 
Name:
Title:

(Tel) 618-439-3743
gaylasink@franklincountyil.org

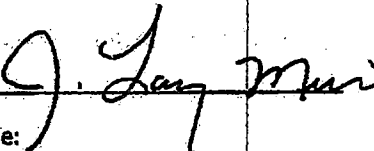
IN WITNESS WHEREOF, the Parties have executed this Elevator Maintenance Agreement on the date first above written.

Phoenix Modular Elevator, Inc.
(The Company)

By: 

Name: Allison Allgaier
Title: President

County of Franklin
(The Owner)

By: 

Name:
Title:

EXHIBIT A

WORK DESCRIPTION

The Company shall provide maintenance service for the following equipment of the Owner (the "Equipment"): 2-stop hydraulic elevator. Work to be done shall include the following:

1. Monthly Inspection. Monthly inspection, cleaning, lubrication and adjustment (as needed) of the Equipment. The Owner shall pay all third-party inspection fees (e.g., for annual elevator inspection).
2. Repair or Replacement. Repair or replacement (at the Company's cost) of parts integral to the Equipment, including the following:
 - A. Driving machines.
 - B. Controller parts and boards, except proprietary components.
 - C. Position indicator and call lights.
 - D. Cab parts, including sill cleaning and guide replacement.
 - E. Batteries for emergency lighting, battery lowering, board memory, and UPS systems.
 - F. Cleaning of hoistways, door hangers, rollers, track, sills, car tops, machine rooms, and pits.
 - G. Parts and motors related to door operation.
 - H. Push buttons and key switches.
 - I. For Traction-Type Equipment: elevator machine, motor, and controller parts, including mechanical parts, gears, worms, bearings, thrusts, brake magnet coils or stators, brake shoes and lining, brushes, windings, contacts, magnet frames, coils, rotating elements, and resistance for motor and operating circuits.
 - J. For Hydraulic-Type Equipment: elevator pumping unit, including mechanical parts, packing, drive motor, pumps, valves, starters, contacts, relays, magnet frames, hydraulic fluid and limit switches, with the exception of the cylinder and piston.
3. Exclusions. The following items of Equipment or Work are not covered by this Agreement:
 - A. Proprietary microprocessors, equipment, and software.
 - B. Power feed lines, disconnects, and fuses.
 - C. Light bulbs, light fixtures, fans, and emergency lights.
 - D. Cab walls, floors, door panels, hoistway door panels, frames and sills.
 - E. Jacks, casing and underground piping.
 - F. With respect to "full-load" inspections (every 5 years), the Company's cost of a helper and all test weight rental costs involved.

G. The exclusions described in Section 2(B), above.

4. Callback service is included on a 24-hour, 7-day a week basis at the rates in Exhibit B, section A (3) and (5)

EXHIBIT B

COMPENSATION TO COMPANY

A. Compensation for Work (described in Exhibit A)

1. The price for services rendered by the Company to the Owner shall be \$210 per month, paid in advance.
2. If 24-hour telephone monitoring is desired, it shall cost an additional \$10 per month.
3. Labor rates for work covered by this Agreement but performed outside normal business hours shall be paid at the following rates:
 - A. Overtime callbacks (after hours and Saturdays): \$133/hr (mechanic)
 - B. Double time callbacks (Sundays and holidays): \$190/hr (mechanic)
4. Labor rates for work not covered by this Agreement shall be paid at the following rates:
 - A. Regular time service work: \$190/hr (mechanic); \$133/hr (helper).
 - B. Overtime callbacks (after hours and Saturdays): \$323/hr (mechanic).
 - C. Double time callbacks (Sundays and holidays): \$380/hr (mechanic).
5. A trip charge of \$100 shall apply to any service calls other than scheduled monthly maintenance.

B. Compensation Payment Method.

Invoices issued by the Company to the Owner shall be due upon receipt. Any invoices outstanding beyond thirty (30) days shall incur a 1.5% interest charge per month, compounded monthly. In the event of any default by the Owner with respect to the aforementioned payment terms, the Owner shall pay, in addition to the defaulted amount, all reasonable attorney's fees of the Company, as well as collection and dispute resolution costs (unless directed otherwise by the arbitrator(s) (if any) chosen by the Parties to resolve such dispute).

C. Annual Rate Adjustments

The above rates (both monthly fees and hourly rates) shall increase automatically by 2% each year, on the anniversary date of this contract.