City of Birmingham
A Walkable Community

MEMORANDUM

City Clerk's Office

DATE: **March 20, 2015**

TO: **Joseph A. Valentine, City Manager**

FROM: **Carlos Jorge, Building Supervisor**
Paul T. O'Meara, City Engineer

SUBJECT: **Professional Service Agreement for the Peabody Street Parking Structure Elevator**

In the past few months we had been monitoring the Passenger Elevator located at Peabody Street Parking Structure. It got to the point that this unit needs to be upgrade. The reasons for upgrade are because it is becoming hard and expensive to keep in operation due to age, also finding components and replacements parts is difficult.

The maintenance staff has been working with the Engineering Department on a requested proposal to make a long term solution and had the contractor perform a full assessment of the Peabody Street passenger elevator.

Attached is the proposal from National Elevator Consultants, Inc. for the work necessary to make improvements. The work will involve a feasibility study, the development of specifications, engineering work and overseeing the installation of new equipment up to final inspection.

This work is proposed at $10,600. National Elevator Consultants, Inc. provides the professional services required to complete this work.

The National Elevator Consultants, Inc. has been used by the City in the past for other elevator needs and the City has been very satisfied with their past performances, prices and the professional services provided. Once the bid specs are developed, we will proceed with bidding this project.

The proposal for the professional service agreement with National Elevator Consultants, Inc. for development of bid specifications, engineering work and managing the custom construction necessary for controls upgrade to the passenger elevator has just recently been received. This expenditure was not anticipated when the fiscal year 2014-2015 budget was developed.

SUGGESTED RESOLUTION:
To approve the professional service agreement with National Elevator Consultants, Inc. to perform items A through E in the their proposal of March 19, 2015 in an amount not to exceed $10,600 to the Peabody St. Parking Structure Elevator Maintenance account # 585-538.004-

930.0200 and direct the Mayor and City Clerk to sign the agreement on behalf of the City and further.

National Elevator Consultants, Inc.
7397 AQUA ISLE
ALGONAC, MI 48001-4203
Toll Free 1-866-241-6324
Fax: 270-866-5702
elevcons.com

March 19, 2015

Mr. Carlos Jorge
City of Birmingham
151 Martin Street
Birmingham, MI 48012

SUBJECT: Elevator Consulting: 1 Elevator at the Peabody Street Parking Structure

We appreciate this opportunity to provide you with a consulting proposal for your elevator modernization based on the subject building. The following represents the services we are proposing.

A. FEASIBILITY STUDY - PROJECT STAGING/SCHEDULE OF VALUES

A review of your previous Feasibility Study will be conducted to determine what of the existing equipment should be renewed, retained, altered, and/or repaired, in order to maximize the performance, reliability and safety of the present equipment, also, whereby, all materials would be in complete compliance with the local governing codes, the ANSI Code for Elevators, and the ADA requirements. We will perform a budget cost analysis of the project and a estimated schedule of installation based on our survey and recommendations. Contract staging would be determined on how you elect to proceed with the installation of the work.

B. SPECIFICATIONS AND BIDDING DOCUMENTS (SBD)

National Elevator Consultants, Inc. Specifications will be prepared based on the Feasibility Study, and will include the following:

a. NECI standard terms and conditions
b. Mandatory requirement for code compliance
c. Work to be performed by other contractors.
d. Technical specifications including product description
e. Final testing requirements
f. Maintenance Specifications of the performance type
g. Warranty requirements
h. Assist in evaluation and selection of lowest qualified bidder
i. Performance requirements of people and equipment
j. Construction schedule
k. Payment schedule
l. Provide for alternates in both the product and the service

C. APPROVALS (APP)

We will process, coordinate, approve or disapprove, as required, all elevator submittals including, but not limited to, the following:

a. Hoistway layouts
b. Machine room layouts
c. Cab details
d. Landing door details
e. Fixture drawings and brochures
f. Electrical confirmation request
g. Extras over and beyond contract
h. Material substitutions
i. Code variations
j. Parts manuals
k. Shipping schedules
l. Colors and finishes (with owner or architect)
m. Control and operational changes
n. Tearout schedules
o. Field and schematic electrical wiring diagrams
p. Power requirements

D. FINAL INSPECTION (FI)

A final Inspection will be provided when all elevators have been completed and approved by the local code authorities. The inspection will be made for the purpose of determining the contractor's full compliance to the specifications and applicable codes and compliance with ADA guidelines for the disabled. We will provide a written report, including a punch list of items to be corrected, added, or modified, at the conclusion of the inspection.

E. PROJECT MANAGEMENT (PM)

Project Management, beginning with destruction of existing equipment, shall run consecutively until Final Inspection, and shall include, but not be limited to, the following services.

a. Arrange, chair and attend scheduled progress meetings
b. Perform progress inspections
c. Prepare and submit monthly report to owner
d. Approve progress payment requests
e. Review and approve any extras during tearout and construction.
f. Periodic job site visitations
g. Resolve and/or clarify issues arising during installation.

The foregoing will be provided for the sum of:

Amount

A.	**FEASIBILITY STUDY - PROJECT STAGING/SCHEDULE OF VALUES:**	**Completec**	
B.	**SPECIFICATIONS & BIDDING DOCUMENTS:** **(Includes one post bid and one award meeting)**	**$ 3,600.**	
C.	**APPROVALS:**	**$ 2,000.**	
D.	**FINAL INSPECTION:**	**$ 1,800.**	
	TOTAL ITEMS A, B, C & D	**$ 7,400.**	
E.	**PROJECT MANAGEMENT: (2 Visitsl)** *** Per Visit** ***(Includes Travel and Expenses)**	**$ 3,200.**	
	TOTAL WITH PROJECT MGMT.		**$ 10,600.**

Any further scheduled meetings required in addition to one post bid meeting, one award meeting, or more than one project management meeting-per-month will be at a cost of $200. per man/per hour for travel, meeting time and report time.

All services provided by National Elevator Consultants, Inc. would be performed within the guidelines of the latest applicable ASME/ANSI A17.1 Safety Code for elevators and escalators.

The amount quoted is all-inclusive and subject to review and adjustment after sixty (60) days from date of this quotation.

If this Proposal meets with your approval, please provide a Purchase Order Number below, or signature of approval, then date and fax to 270-866-5702. We would certainly look forward to working with you on this project.

Sincerely yours,

NATIONAL ELEVATOR CONSULTANTS, INC.

Randall G. Frump

Randall G. Frump
President

_____ _____

Purchase Order Authorization or Signature Approval Date

CONSULTING AGREEMENT BETWEEN THE CITY OF BIRMINGHAM
AND NATIONAL ELEVATOR CONSULTANTS, INC.

AGREEMENT made this ____ day of _____, 2015, by and between the City of Birmingham whose address is 151 Martin Street, Birmingham, Michigan (hereinafter referred to as the "City") and National Elevator Consultants, Inc., whose address is 7397 Aqua Isle, Algonac, Michigan 48001, (hereinafter referred to as the "Contractor"), to-wit:

1. Contractor shall provide professional elevator consultant services under this Agreement as set forth in the attached Proposal dated March 19, 2015, which is incorporated into this Agreement. If there are conflicts between this Agreement and the Proposal, the terms of this Agreement shall control. Such services pertain to the passenger elevator at the Peabody Street Parking Structure located in the City of Birmingham and include the following areas of work as more fully described in the Proposal:

   A. Conducting a feasibility study-project staging/schedule of values;

   B. Providing specifications and Bid Documents;

   C. Processing elevator submittals;

   D. Conducting final inspections; and

   E. Providing the project management services.

2. Payment for professional services rendered under this Agreement shall be as set forth in the Proposal, in an amount not to exceed $ 10,600.00 It is noted that the $3,200 for project management services in the Proposal includes the two (2) visits and is not a "per visit" fee as indicated. Travel expenses and all other costs are included in this fee. The City promises and agrees to pay said Contractor for all labor supplied and work performed under this Agreement. Invoices shall be submitted to the City on a monthly basis for the services

performed that month and shall be paid upon acceptance by the City of the work produced by the Contractor.

3. Written notices regarding this Agreement shall be addressed to the following:

City: City of Birmingham
P.O. Box 3001
Birmingham, Michigan 48012
Attn: Carlos Jorge, Maintenance Supervisor

Contractor: National Elevator Consultants, Inc.
7397 Aqua Isle
Algonac, Michigan 48001
Attn: Randall G. Frump, President

4. The City shall have the right to terminate this Agreement on thirty (30) days written notice. In the event of termination, the Contractor shall receive compensation for services to the date the termination takes effect and the City shall be entitled to retain and use the results to the date the termination takes effect and the City shall be entitled to retain and use the results of all information, documents and recommendations prepared by the Contractor through such date.

5. The Contractor and the City agree that the Contractor is acting as an independent contractor with respect to the Contractor's role in providing services to the City pursuant to this Agreement, and as such, shall be liable for its own actions and neither the Contractor nor its employees shall be construed as employees of the City. Nothing contained in this Agreement shall be construed to imply a joint venture or partnership and neither party, by virtue of this Agreement, shall have any right, power or authority to act or create any obligation, express or implied, on behalf of the other party, except as specifically outlined herein. Neither the City nor the Contractor shall be considered or construed to be the agent of the other, nor shall either have the right to bind the other in any manner whatsoever,

except as specifically provided in this Agreement, and this Agreement shall not be construed as a contract of agency. The Contractor shall not be considered entitled or eligible to participate in any benefits or privileges given or extended by the City, or be deemed an employee of the City for purposes of federal or state withholding taxes, FICA taxes, unemployment, workers' compensation or any other employer contributions on behalf of the City.

6. The Contractor acknowledges that in performing services pursuant to this Agreement, certain confidential and/or proprietary information (including, but not limited to, internal organization, methodology, personnel and financial information, etc.) may become involved. The Contractor recognizes that unauthorized exposure of such confidential or proprietary information could irreparably damage the City. Therefore, the Contractor agrees to use reasonable care to safeguard the confidential and proprietary information and to prevent the unauthorized use or disclosure thereof. The Contractor shall inform its employees of the confidential or proprietary nature of such information and shall limit access thereto to employees rendering services pursuant to this Agreement. The Contractor further agrees to use such confidential or proprietary information only for the purpose of performing services pursuant to this Agreement.

7. This Agreement shall be governed by and performed, interpreted and enforced in accordance with the laws of the State of Michigan. The Contractor agrees to perform all services provided for in this Agreement in accordance with and in full compliance with all local, state and federal laws and regulations.

8. If any provision of this Agreement is declared invalid, illegal or unenforceable, such provision shall be severed from this Agreement and all other provisions shall remain in full force and effect.

9. This Agreement shall be binding upon the successors and assigns of the parties hereto, but no such assignment shall be made by the Contractor without the prior written consent of the City. Any attempt at assignment without prior written consent shall be void and of no effect.

10. The Contractor agrees that neither it nor its subcontractors will discriminate against any employee or applicant for employment with respect to hire, tenure, terms, conditions or privileges of employment, or a matter directly or indirectly related to employment because of race, color, religion, national origin, age, sex, height, weight or marital status. The Contractor shall inform the City of all claims or suits asserted against it by the Contractor's employees who work pursuant to this Agreement. The Contractor shall provide the City with periodic status reports concerning all such claims or suits, at intervals established by the City.

11. To the fullest extent permitted by law, the Contractor and any entity or person for whom the Contractor is legally liable, agrees to be responsible for any liability, defend, pay on behalf of, indemnify, and hold harmless the City of Birmingham, its elected and appointed officials, employees and volunteers and others working on their behalf against any and all claims, demands, suits, or loss, including all costs and reasonable attorney fees connected therewith, and for any damages which may be asserted, claimed or recovered against or from the City, its elected and appointed officials, employees, volunteers or others working on their behalf, by reason of personal injury, including bodily injury and death and/or property damage, including loss of use thereof, which arises out of or is in any way connected or associated with this Agreement. Such responsibility shall not be construed as liability for damage caused by or resulting from the sole act or omission of its elected or appointed officials, employees, volunteers or others working on behalf of the City.

12. The Contractor shall not commence work under this Agreement until it has, at its sole expense, obtained the insurance required by this paragraph. All certificates of insurance shall be with insurance carriers licensed and admitted to do business in the State of Michigan. All coverages shall be with insurance carriers acceptable to the City of Birmingham. The Contractor shall maintain during the life of this Agreement the types of insurance coverage and minimum limits as set forth below:

A. Workers' Compensation Insurance: Contractor shall procure and maintain during the life of this Agreement, Workers' Compensation Insurance, including Employers Liability Coverage, in accordance with all applicable statutes of the State of Michigan.

B. Commercial General Liability Insurance: Contractor shall procure and maintain during the life of this Agreement, Commercial General Liability Insurance on an "Occurrence Basis" with limits of liability not less than $1,000,000 per occurrence combined single limit, Personal Injury, Bodily Injury and Property Damage. Coverage shall include the following extensions: (A) Contractual Liability; (B) Products and Completed Operations; (C) Independent Contractors Coverage; (D) Broad Form General Liability Extensions or equivalent; (E) Deletion of all Explosion, Collapse and Underground (XCU) Exclusions, if applicable.

C. Motor Vehicle Liability Insurance: Contractor shall procure and maintain during the life of this Agreement Motor Vehicle Liability Insurance, including all applicable no-fault coverages, with limits of liability of not less than $ 1,000,000 per occurrence combined single limit Bodily Injury and Property Damage. Coverage shall include all owned vehicles, all non-owned vehicles, and all hired vehicles.

D. Additional Insured: The Commercial General Liability and Motor Vehicle Liability, as described above, shall include an endorsement stating the following shall be *Additional Insureds*: The City of Birmingham including all elected and appointed officials, all employees, all boards, commissions and/or authorities and board members. This coverage shall be primary and any other insurance maintained by the additional insureds shall be considered to be excess and non-contributing with this insurance required from Contractor under this Section.

E. Professional Liability Insurance: If Professional Liability Insurance is available, Professional Liability Insurance with limits of not less than

$1,000,000 per claim if Consultant will provide service that are customarily subject to this type of coverage.

F. Cancellation Notice: Workers' Compensation Insurance, Commercial General Liability Insurance, Professional Liability Insurance and Motor Vehicle Liability Insurance as described above, shall include an endorsement stating the following: "Thirty (30) days Advance Written Notice of Cancellation or Non-Renewal shall be sent to: Director of Finance, City of Birmingham, P.O. Box 3001, 151 Martin Street, Birmingham, Michigan 48012.

G. Proof of Insurance Coverage: Contractor shall provide the City at the time the Agreement is returned for execution, Certificates of Insurance and/or policies, acceptable to the City, as listed below.

1) Two (2) copies of Certificate of Insurance for Workers' Compensation Insurance;

2) Two (2) copies of Certificate of Insurance for Commercial General Liability Insurance;

3) Two (2) copies of Certificate of Insurance for Vehicle Liability Insurance;

4) Two (2) copies of Certificate of Insurance for Professional Liability Insurance;

H. Coverage Expiration: If any of the above coverages expire during the term of this Agreement, Contractor shall deliver renewal certificates and/or policies to the City at least (10) days prior to the expiration date.

13. If, after the effective date of this Agreement, any official of the City, or spouse, child, parent or in-law of such official or employee shall become directly or indirectly interested in this Agreement or the affairs of the Contractor, the City shall have the right to terminate this Agreement without further liability to the Contractor if the disqualification has not been removed within thirty (30) days after the City has given the Contractor notice of the disqualifying interest. Ownership of less than one percent (1%) of the stock or other equity interest in a corporation or partnership shall not be a disqualifying interest. Employment shall be a disqualifying interest.

14. If Contractor fails to perform its obligations hereunder, the City may take any and all remedial actions provided by the general specifications or otherwise permitted by law.

15. Any controversy or claim arising out of or relating to this Agreement, or the breach thereof, shall be settled either by commencement of a suit in Oakland County Circuit Court, the 48th District Court or by arbitration. If both parties elect to have the dispute resolved by arbitration, it shall be settled pursuant to Chapter 50 of the Revised Judicature Act for the State of Michigan and administered by the American Arbitration Association with one arbitrator being used or three arbitrators in the event any party's claim exceeds $1,000,000. Each party shall bear its own costs and expenses and an equal share of the arbitrator's and administrative fees of arbitration. Such arbitration shall qualify as statutory arbitration pursuant to MCL §600.5001 et. seq., and the Oakland County Circuit Court or any court having jurisdiction shall render judgment upon the award of the arbitrator made pursuant to this Agreement. The laws of the State of Michigan shall govern this Agreement, and the arbitration shall take place in Oakland County, Michigan. In the event that the parties elect not to have the matter in dispute arbitrated, any dispute between the parties may be resolved by the filing of a suit in the Oakland County Circuit Court or the 48th District Court.

16. The City shall be the owner of all drawings, reports, specifications and other documents prepared by the Contractor. Any modifications made to these documents by the City shall be clearly marked as such on the modified document. Any modifications made by the City without the prior written consent of the Contractor shall be at the City's sole risk and responsibility.

FAIR PROCUREMENT OPPORTUNITY: Procurement for the City of Birmingham will be handled in a manner providing fair opportunity for all businesses. This will be accomplished

without abrogation or sacrifice of quality and as determined to be in the best interest of the City of Birmingham.

IN WITNESS WHEREOF, the said parties have caused this Agreement to be executed as of the date and year above written.

NATIONAL ELEVATOR CONSULTANTS, INC.

By: _____
Randall G. Frump
Its: President

CITY OF BIRMINGHAM

By: _____
Stuart Lee Sherman, Mayor
Its: Mayor

By: _____
Laura M. Pierce
Its: City Clerk

Approved:

_____
Carlos Jorge, Maintenance Supervisor
(Approved as to Substance)

_____
Mark Gerber, Director of Finance
(Approved as to Financial Obligation)

_____
Timothy J. Currier, City Attorney
(Approved as to Form)

_____
Joseph Valentine, City Manager
(Approved as to Substance)