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CLERK OF THE BOARD
OF COUNTY COMMISSIONERS
MIAMI-DADE COUNTY, FLORIDA

MEMORANDUM

Agenda Item No. 13(A)(1)

TO: Honorable Chairman Jean Monestime and Members, Board of County Commissioners

DATE: July 19, 2016

FROM: Abigail Price-Williams County Attorney

SUBJECT: Resolution approving terms of a settlement agreement between Miami-Dade County and Schindler Elevator Corporation in the amount of $680,942.00 to be paid to Schindler Elevator Corporation and authorizing execution of the Settlement Agreement by the County Mayor

Resolution No. R-725-16

The accompanying resolution was placed on the agenda by the County Attorney's Office.

Abigail Price-Williams
County Attorney

APW/cp

Memorandum

MIAMI-DADE COUNTY

Date: July 19, 2016

To: Honorable Chairman Jean Monestime
and Members, Board of County Commissioners

From: Carlos A. Gimenez
Mayor

Abigail Price-Williams
County Attorney

Subject: Resolution Approving a Final Settlement Agreement and Mutual Release with Schindler Elevator Corporation Executed under Contract No. SS1245-3/27-1 Elevator and Escalator Maintenance, Repair, and Modernization Services; and Authorizing County Mayor or County Mayor's Designee to Execute the Final Settlement Agreement and Enforce the Terms Contained Therein

RECOMMENDATION

It is recommended that the Board of County Commissioners (Board) approve the settlement of a lawsuit, styled *Schindler Elevator Corporation v. Miami-Dade County, Florida*, currently pending in the Circuit Court of the Eleventh Judicial Circuit, Miami Dade County Circuit Court Case No. 2015-030192-CA-01 (Schindler Lawsuit) and authorize the County Mayor or County Mayor's designee to execute the attached Final Settlement Agreement and Mutual Release between Miami-Dade County and Schindler Elevator Corporation (Schindler). The Settlement Agreement and Mutual Release will fully resolve all outstanding claims between Schindler and the County.

SCOPE OF AGENDA ITEM

This Settlement Agreement is countywide in nature and relates specifically to a contract entered into between the County and Schindler on October 1, 2007, for elevator, escalator, and moving walkways maintenance, repair, and modernization services. Under Schindler's contract with the County, Schindler is required to provide these services to the Miami Dade Aviation, Corrections and Rehabilitation, Internal Services, Transportation and Public Works, PortMiami, and Parks, Recreation, and Open Spaces Departments, as well as the Adrienne Arsht Center for the Performing Arts.

FISCAL IMPACT/FUNDING SOURCE

The immediate fiscal impact of this item is $680,942, which represents $180,942 in reimbursement of User Access Program (UAP) fees that were collected by the Miami Dade Aviation Department, as well as two (2) payments of $250,000 for compensation due to price adjustments that were deferred over the contract term to date.

BACKGROUND

On October 1, 2007, Schindler and the County entered into a 20 year contract to provide elevator, escalator, and moving walkways maintenance, repair, and modernization services at various locations throughout the County. In December of 2015, during the eighth year of this 20 year agreement, Schindler sued the County alleging that: (1) the contract between Schindler and the County is in excess of the contract term permitted by law; (2) the County improperly deducted the UAP fee from invoices even though the contract expressly exempted services provided for the Miami-Dade Aviation Department from the application of the UAP; (3) the County failed to grant contractually obligated price increases; (4) the County failed to pay Schindler for excess labor demanded but not covered by the contract; (5) the County imposed illegal penalties against Schindler in the performance of the contract; and (6) the County failed to act in good faith in administering the contract.

The proposed settlement, negotiated by the Internal Services Department in conjunction with the County Attorney's Office, resolves all claims against the County for a refund of the improper assessment of UAP fees on Miami-Dade Aviation Department invoices and an adjustment in the contract prices as a result of the denial or delay in awarding annual price increases. Under the proposed settlement, the County will, within 10 days of the effective date of the settlement approval, refund Schindler $180,942 in UAP fee payments on Miami-Dade Aviation's Department invoices. The County will also pay Schindler $500,000 in two (2) installments of $250,000 each to account for a portion of the annual price increases which were either delayed or refused during the prior years of the contract. In most instances, over the past eight (8) years, the County opted to reduce the amount of the annual adjustments from the formula provided in the contract. In response to these downward deductions, Schindler argued that it was entitled to increased contract payments, such as additional charges for portions of the labor component associated with the contract. Under the proposed settlement, Schindler agrees that all such labor is included in the adjusted base price of the contract.

In addition, the proposed settlement provides for a definitive means of achieving future price adjustments. For Fiscal Years (FY) 2016-2017 and 2017-2018 contract prices will be increased by a fixed total of five (5) percent. Following FY 2017-2018, future annual price adjustments will be based on indexed price increases for materials and labor. The price increase for the material components of the contract will be based on the actual published indices of the Producer Price Index (PPI) Industry Data for Elevator, Stairway, and Moving Walkways Manufacturing published by the U.S. Department of Labor. The price increase for the labor component of the contract will be based on the labor rate published by the Elevator Contractors of America, Inc. for International Union of Elevator Contractors (IUEC), Local #71, and Miami, FL. The target distribution for application of price adjustments is 85 percent for labor, and 15 percent for materials. The maximum annual increase in price increases will also be reduced from a cap of six (6) percent a year in the current contract to five (5) percent a year if the settlement is approved.

The proposed settlement also establishes a process to improve administration of the contract by strengthening communications between the vendor's representatives and the County's professional contract management staff in all departments where Schindler provides services, as well as improvements in processes for problem resolution, invoicing discrepancies, and assessment of liquidated damages.

Upon the Board's approval of the Settlement Agreement and Mutual Release, the parties will file a joint stipulation of dismissal, concluding the Lawsuit and resolving all claims between the parties. Even with the adjustment of prices provided in the Settlement Agreement, the pricing terms under the contract for the services are more favorable than can be obtained by a replacement contract.

Edward Marquez
Deputy Mayor

Attachment

MEMORANDUM

(Revised)

TO: Honorable Chairman Jean Monestime
and Members, Board of County Commissioners

DATE: July 19, 2016

FROM: Abigail Price-Williams
County Attorney

SUBJECT: Agenda Item No. 13(A)(1)

Please note any items checked.

_____	**"3-Day Rule" for committees applicable if raised**
_____	**6 weeks required between first reading and public hearing**
_____	**4 weeks notification to municipal officials required prior to public hearing**
_____	**Decreases revenues or increases expenditures without balancing budget**
_____	**Budget required**
_____	**Statement of fiscal impact required**
_____	**Statement of social equity required**
_____	**Ordinance creating a new board requires detailed County Mayor's report for public hearing**
✓	
_____	**No committee review**
_____	**Applicable legislation requires more than a majority vote (i.e., 2/3's ____, 3/5's ____, unanimous _____) to approve**
_____	**Current information regarding funding source, index code and available balance, and available capacity (if debt is contemplated) required**

Approved _____ Mayor
Veto _____
Override _____

Agenda Item No. 13(A)(1)
7-19-16

RESOLUTION NO. R-725-16

RESOLUTION APPROVING TERMS OF A SETTLEMENT AGREEMENT BETWEEN MIAMI-DADE COUNTY AND SCHINDLER ELEVATOR CORPORATION IN THE AMOUNT OF $680,942.00 TO BE PAID TO SCHINDLER ELEVATOR CORPORATION AND AUTHORIZING EXECUTION OF THE SETTLEMENT AGREEMENT BY THE COUNTY MAYOR OR COUNTY MAYOR'S DESIGNEE

WHEREAS, this Board wishes to accomplish the purposes outlined in the accompanying memorandum, a copy of which is incorporated herein by reference,

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF MIAMI-DADE COUNTY, FLORIDA, that:

Section 1. That this Board hereby approves the Settlement Agreement, in substantially the form attached hereto, between Miami-Dade County and Schindler Elevator Corporation, in the amount of $680,942.00 to be paid to Schindler Elevator Corporation to resolve any and all claim between the parties arising out of a lawsuit styled *Schindler Elevator Corporation v. Miami-Dade County, Florida*, currently pending in the Circuit Court of the Eleventh Judicial Circuit, Miami Dade County Circuit Court Case No. 2015-030192-CA-01; and authorizes the County Mayor or County Mayor's designee to execute the Settlement Agreement for and on behalf of Miami-Dade County.

The foregoing resolution was offered by Commissioner **Esteban L. Bovo, Jr.** , who moved its adoption. The motion was seconded by Commissioner **José "Pepe" Diaz** and upon being put to a vote, the vote was as follows:

Jean Monestime, Chairman	**aye**		
Esteban L. Bovo, Jr., Vice Chairman	**aye**		
Bruno A. Barreiro	**aye**	Daniella Levine Cava	**aye**
Jose "Pepe" Diaz	**aye**	Audrey M. Edmonson	**aye**
Sally A. Heyman	**aye**	Barbara J. Jordan	**absent**
Dennis C. Moss	**aye**	Rebeca Sosa	**aye**
Sen. Javier D. Souto	**aye**	Xavier L. Suarez	**absent**
Juan C. Zapata	**aye**		

The Chairperson thereupon declared the resolution duly passed and adopted this 19th day of July, 2016. This resolution shall become effective upon the earlier of (1) 10 days after the date of its adoption unless vetoed by the County Mayor, and if vetoed, shall become effective only upon an override by this Board, or (2) approval by the County Mayor of this Resolution and the filing of this approval with the Clerk of the Board.

MIAMI-DADE COUNTY, FLORIDA
BY ITS BOARD OF
COUNTY COMMISSIONERS

HARVEY RUVIN, CLERK

By: Christopher Agrippa
Deputy Clerk

Approved by County Attorney as
to form and legal sufficiency.

Oren Rosenthal

SETTLEMENT AGREEMENT AND MUTUAL RELEASE

This Settlement Agreement and Mutual Release (the "Agreement") is made, voluntarily entered into, and effective as of the 7 day of JUNE 2016 by and between Miami-Dade County, Florida ("MDC" or the "County"), a political subdivision of the State of Florida, and Schindler Elevator Corporation, a foreign for-profit corporation ("Schindler") (collectively the "Parties").

WHEREAS, on or about January 1, 2007 the County and Schindler entered into a written contract for Elevator and Escalator Maintenance & Repair Services, Contract No.: SS1245-3/27 and has, from time-to-time amended such contract (the "Contract"); and

WHEREAS, a dispute arose between the County and Schindler regarding the parties' joint performance under the Contract and the terms and conditions therein; and

WHEREAS, Schindler filed and served the action styled *Schindler Elevator Corporation v. Miami-Dade County, Florida*, Miami-Dade County Circuit Court Case No. 15-30192 CA 40 (the "Schindler Lawsuit"); and

WHEREAS, the Schindler Lawsuit through a Complaint and Amended Complaint for damages and declaratory relief alleges that the "Contract Enforcement" clause is an unenforceable penalty, that the County breached the Contract for failure to reimburse Schindler for such penalties, that the term of the Contract was in violation of Florida Statutes s. 287.058(13), et seq., that the County breached the implied duty of good faith and fair dealing regarding the potential annual price increases under the Contract, that the County failed to pay Schindler for additional labor under the Contract, that the County has been unjustly enriched from additional labor provided under the Contract, that the County has breached the Contract by failing to pay Schindler in accordance with the prompt payment terms of the Contract, that the

County has breached the Contract by improperly assessing a two percent user access fee, that the County has breached the implied covenant of good faith and fair dealing for improperly assessing a two percent user access fee; and

WHEREAS, the County has filed a Motion to Dismiss in response to certain allegations in the Complaint and has asserted the potential for counter-claims regarding Schindler's performance and declaratory relief; and

WHEREAS, the County and Schindler desire to amicably settle all claims and disputes between them arising out of the events which were or could have been asserted by either party in the Schindler Lawsuit, and to release each other from any and all liability with respect to said events, to amend the Contract to clarify the understanding of the parties, and to set forth their mutual understanding and agreements with respect thereto; and

WHEREAS, except as set forth herein, this Agreement is a negotiated resolution of the Schindler Lawsuit and not an admission of liability by either party of the allegations raised in the Schindler Lawsuit,

NOW THEREFORE, in consideration of the following covenants, obligations, payments promises of release, and dismissal, the receipt, sufficiency and adequacy of all such consideration being expressly acknowledged, the Parties agree as follows:

1. **Incorporation**: The foregoing recitals of fact were made and shall be a part of this Agreement to the same extent as if fully set forth herein.

2. **Payment:** the County agrees to pay Schindler three payments as follows: one payment of One Hundred and Eighty Thousand Nine Hundred and Forty Two Dollars ($180,942.00) within ten days after the Effective Date of this Agreement; one payment of Two Hundred and Fifty Thousand Dollars ($250,000.00) within ten days after the Effective Date of

this Agreement; and one payment of Two Hundred and Fifty Thousand Dollars ($250,000.00) on October 1, 2016 which, together with the other covenants and obligations of this Agreement shall resolve the liquidated sums that were or could have been asserted by the County or Schindler in the Schindler Lawsuit.

3. **Amendment of Contract:** In addition to the payments set forth in this Agreement, the Parties jointly agree to execute the attached addendum ("Attachment A") to the Contract to: (1) increase the base price of the Contract by Five Hundred Thousand Dollars ($500,000.00) effective October 1, 2016, but calculated prior to any price adjustment for the contract year 2016-2017; (2) acknowledge and clarify that all labor for testing and inspection of County equipment required by the Contract is covered by the base price of the Contract; (3) amend the annual price adjustment to provide, for the Contract years commencing October 1, 2016 and October 1, 2017 an automatic five percent (5%) price increase for both the base price of the Contract and the price for Time and Material and Fixed Price billing rates, and to provide that all annual price adjustments beginning October 1, 2018 for both the base price and Time and Material Fixed Price shall be based solely on the rate of change in Labor as published by the Elevator Contractors of America, Inc. for the International Union of Elevator Constructors (IUEC) Local No, 71, and Elevator Materials Index as published by the United States Department of Labor, but not to exceed five percent (5%) in the aggregate in any given year, as more fully explained in Paragraph 2 of the attached Contract addendum, and that an award of such annual price adjustments shall be non-discretionary; (4) immediately discontinue the application of the user access program deductions to Miami-Dade Aviation Department invoices; (5) clarify the mechanism for imposing liquidated damages to provide for timely, advance notice of an intent to impose liquidated damages and to provide for a process to dispute any such

assessments; (6) clarify the process and implement procedures to assure timely payments are made to Schindler in accordance with the Contract (within thirty (30) days of receipt of an approved invoice for services rendered) of all undisputed amounts or the undisputed portions of any invoices; and (7) establish monthly performance meetings, including a provision that allows for the respective parties to request the attendance of specific persons if the requesting party believes, in good faith, the requested person's presence is necessary to the resolution of a specific issue. Any material breach of the amendment as set forth in Attachment A shall also be a breach of this Agreement.

4. **Effective Date:** This Agreement is not effective until approved by the Board of County Commissioners of Miami-Dade County, Florida (the "BCC") and either (1) the expiration or waiver of the time period for veto by the Mayor of Miami-Dade County, or (2) the BCC's override of any such veto (the "Effective Date").

5. **Release by Schindler:** Upon the Effective Date referenced in Paragraph 4 above, and subject to enforcement of this Agreement, Schindler now and forever, fully and finally remises, releases, acquits and discharges the County, including their respective employees, parent companies, affiliated companies, officers, agents, directors, representatives, insurers, guarantors, attorneys, successors and assigns, of and from any and all claims, damages, demands, actions, liabilities, responsibilities, causes of action, debts due, sums of money, accounts, liens, reckonings, bills, covenants, controversies, agreements, or promises whatsoever, in law or equity, known or unknown, whether in tort or otherwise, arising from or relating in any way to the claims that were or could have been asserted by Schindler against the County in the Schindler Lawsuit except for: (i) any claims related to retainage for the TGK modernization; (ii) any outstanding invoices unrelated to this lawsuit issued in accordance with the Contract as amended by Attachment A, and

(iii) any defenses and counterclaims related to any outstanding liquidated damages assessments issued by the County which may be renoticed in accordance with the Contract as amended by Attachment A, each of which are expressly excepted from this Agreement.

6. **Release by the County:** Upon the Effective Date referenced in Paragraph 4 above, and subject to enforcement of this Agreement, the County now and forever, fully and finally remises, releases, acquits and discharges Schindler, and Schindler's employees, officers, agents, directors, representatives, insurers, guarantors, attorneys, successors and assigns, of and from any and all claims, damages, demands, actions, liabilities, responsibilities, causes of action, debts due, sums of money, accounts, liens, reckonings, bills, covenants, controversies, agreements, or promises whatsoever, in law or equity, known or unknown, whether in tort or otherwise, arising from or relating in any way to the claims and defenses that were or could have been asserted by the County against Schindler in the Schindler Lawsuit except for: (i) any claims related to retainage for the TGK modernization; (ii) any claims related to any undiscovered fraud, and (iii) any outstanding liquidated damages assessments which may be re-noticed in accordance with the Contract as amended by Attachment A, each of which are expressly excepted from this Agreement.

7. **Dismissal of Claims and Attorneys' Fees:** Within ten (10) days of the Agreement's Effective Date referenced in Paragraph 4 above, Schindler shall file a Stipulation of Dismissal of all counts of the Schindler Lawsuit, with prejudice, in the form agreed to by counsel for the parties, and each party agrees to bear its own attorneys' fees and costs. The Stipulation of Dismissal shall allow the court to retain jurisdiction to enforce the terms of this Agreement.

8. **Binding Nature:** The Parties acknowledge, represent and warrant to each other that (i) this Agreement is final and binding upon them, regardless of the adequacy of the consideration hereof, and regardless of the extent of damages allegedly suffered by the Parties, and

(ii) neither party has assigned any right, title or interest in or to any potential claim against any other party to any person or entity.

9. **Construction and Venue:** The Parties acknowledge that this Agreement was the product of mutual negotiation and for purposes of construing its terms, no individual party shall be deemed to have drafted the Agreement. This Agreement shall be governed by, and constructed in accordance with the laws of the State of Florida, without regard to such State's conflict of law decisions and law, and jurisdiction and venue to enforce the same shall exist only in the Circuit of the Eleventh Judicial Circuit in and for Miami-Dade County, Florida.

10. **No Admission of Liability**: This Agreement is a contractual settlement, not a mere recital, and is executed for the purpose of compromising disputed claims and avoiding future litigation. Nothing contained in this Agreement shall ever be construed as an admission of liability or responsibility by any party in connection with any claim, lien, defense, demand, charge, complaint, action, or cause of action asserted by any party under this Agreement against any other party under this Agreement.

11. **Headings/Titles:** The headings for each Paragraph are for convenience only and shall not be utilized in construing the meaning or intent of any of the terms of this Agreement.

12. **Successors:** This Agreement shall apply to and inure to the benefit of and be binding upon and enforceable against the Parties hereto, and their successors, heirs and assigns, as the case may be. However, this Agreement is not assignable by any Party hereto without the express written consent of all other Parties hereto.

13. **Severability:** The Parties have attempted to create an Agreement that is lawful and enforceable in all respects. The validity of this Agreement shall not be affected by any subsequent changes in either federal or state law, whether through legislation or judicial

interpretation, which create, eliminate or change the rights and obligations of the Parties. However, if any provision of this Agreement is held to be invalid, void or unenforceable, the balance of the provisions shall, nevertheless, remain in full force and effect and shall in no way be affected, impaired or invalidated.

14. **Capacity and Legal Consultation:** Each of the Parties represent and warrant that it is duly constituted and organized and that it is duly authorized to enter into this Agreement on its own behalf. It is hereby expressly understood and agreed, and the Parties hereby represent, covenant, and warranty, that each signature hereafter appearing is authorized, genuine, and freely, voluntarily, knowingly, and willfully affixed hereon only after having had the opportunity to have the consequences of the terms of this Agreement explained to each of the Parties by counsel of their choosing.

15. **Multiple Counterparts:** This Agreement may be executed in any number of separate counterparts, each of which shall together be deemed an original, but the several counterparts shall together constitute but one and the same Agreement.

16. **Further Action:** Each of the Parties hereto agrees to execute and deliver all documents, provide all information and take or forebear from all such action as may be reasonable, necessary or appropriate to achieve the purposes of this Agreement.

17. **Merger and Modification**: The Parties acknowledge that there has been no influence to enter into this Agreement in any manner, nor has any Party relied upon any verbal warranties or representations not set forth in this Agreement. This Agreement, together with Attachment A, constitutes the sole and entire agreement between the Parties and no modification hereof shall be binding unless attached hereto and signed by all parties to this Agreement. All prior and contemporaneous conversation, negotiations, possible and alleged agreements,

representations, covenants and warranties concerning the subject matter hereof are, unless reduced to separate writing signed by the parties to this Agreement, deemed merged herein.

THE REMAINDER OF THIS PAGE WAS INTENTIONALLY LEFT BLANK

EXECUTION

IN WITNESS WHEREOF, the Parties have executed and sealed this Agreement.

Sworn to and subscribed before me this
___ day of _____ 2016.

_____
Notary Public
My Commission Expires on:

MIAMI-DADE COUNTY, FLORIDA

_____
By: _____
Its: _____

Sworn to and subscribed before me this
7 day of June 2016.

Sandra L. Blake
Notary Public
My Commission Expires on:

SANDRA L. BLAKE
NOTARY PUBLIC
MECKLENBURG COUNTY
NORTH CAROLINA
MY COMMISSION EXPIRES 3/24/2019

SCHINDLER ELEVATOR CORPORATION

Glenn B. Rohmheiser
By: Glenn P. Rohmheiser
Its: Area General Manager

ADDENDUM NO. 35

Contract Number: **SS1245-3/27**

Contract Title: **Elevator And Escalator Maintenance & Repair Services**

Contractor: **Schindler Elevator Corporation**
13800 NW 2nd Street, Suite 140
Sunrise, FL 33325-6232

This addendum (hereinafter "Addendum"), upon execution by the parties, shall be considered a part of the Contract between Miami-Dade County (the "County") and Schindler Elevator Corporation ("Schindler"), effective July 1, 2016, and provides as follows:

1. Effective October 1, 2016, Schindler shall be granted a one-time price adjustment under the Contract of five hundred thousand ($500,000.00) dollars accomplished by increasing the base prices in the Contract by eleven and forty thousand nine hundred and twenty three - ten thousandths percent (11.40923%). This one-time price adjustment shall be in addition to the annual price adjustment provided for in Section 2.3 of the Contract and shall be calculated and applied prior to the application of the 2016-2017 annual price increase as set forth herein.

2. Sections 2.3 and 3.5 of the Contract are deleted in their entirety and replaced as follows:

2.3 OPTION TO RENEW FOR THREE (3) ADDITIONAL FIVE (5) YEAR PERIODS (With Annual Price Increase) FOLLOWING THE FIRST FIVE YEAR PERIOD UNDER THE CONTRACT

At the anniversary of each five (5) year period the County reserves the option of renewing for an additional five (5) year period, not to exceed a total aggregate term of twenty (20) years under the Contract, with price adjustments on a year-to-year basis as specified. Such price adjustments shall be granted as follows:

Effective October 1, 2016, Schindler shall be granted a five (5%) percent increase in the prices then in effect for maintenance services under the Contract and a five (5%) percent increase in the prices then in effect for Time and Material and Fixed Price billing rates under the Contract. This price increase shall be computed after the one-time price adjustment has been applied to the current prices under the Contract as indicated in paragraph one (1) of this Addendum.

Effective October 1, 2017, Schindler shall be granted a five (5%) percent increase in the prices then in effect for maintenance services under the Contract and a five (5%) percent increase in the prices then in effect for Time and Material and Fixed Price billing rates under the Contract.

On October 1st of every year of the Contract thereafter, Schindler shall be granted a price adjustment in the prices then in effect for maintenance services and the prices then in effect for Time and Material and Fixed Price billing rates ("Annual Price Adjustment"). These price adjustments shall be automatic and not require any further action by Schindler except as set forth herein.

The Annual Price Adjustment shall be initially targeted as a weighted average of: (a) the Material Component - computed as the increase or decrease in the latest available Producer Price Index – Industry Data for Elevator and Moving Stairway Manufacturing published by the Bureau of Labor Statistics of the United States Department of Labor for April of such year, as compared with such index used for the previous year's prices; and (b) the Labor Component - computed as increased or decreased by the increase or decrease in the Labor Rate published by the Elevator Contractors of America, Inc. (E.C.A.) for International Union of Elevator Constructors, Local #71, Miami, Florida for April of such year, as compared with the Labor Rate used for the previous year's price. The initial target weighting of the Material Component shall be fifteen percent (15%) of the Total Annual Adjustment and the Labor Component shall be eighty-five percent (85%) of the Total Annual Adjustment. By way of example only and assuming the target weighting, if the Material Component for any year increases by four percent (4%) and the Labor Component increases by two percent (2%) then the Annual Price Adjustment for such year shall be two and three-tenths percent (2.3%) computed as ((.04 x .15) + (.02 x .85) = .023).

On or before July 15 of each Contract year, Schindler and the County shall confirm the Annual Price Adjustment and price list effective October 1 of the year reflecting the percentage adjustments set forth herein. At such time, the Annual Price Adjustment shall be set by: (1) the initial target weighting of the Material and Labor Components; or (2) if requested by Schindler or the County, a change to the initial target weighting based on the relative usage of materials and labor in the prior contract year as set forth in the computation for the Annual Price Adjustment. Any request for a change in the initial target weighting shall be considered by the non-requesting party and shall not be unreasonably denied. Notwithstanding the foregoing, the Annual Price Adjustment and any actual annual price adjustment may not exceed five (5%) percent for any contract year.

Schindler and the County may, at any time, mutually agree to the application of pricing discounts at any time when in the interest of both parties. Additionally, in the unlikely event a published rate is not available on July 15, the parties agree to continue under the last published rate until a new rate is published, at which time the new rate shall automatically apply. In such case, if Schindler is required by virtue of its agreement with the I.U.E.C. to make retroactive payments to its Union labor for the difference between prior published rates and a new published rated, Schindler shall have the right to apply for reimbursement from the County for such retroactive payments, with such application to be accompanied by documentary support for these payments.

The County reserves the right to add/delete any group, department, facility, location, or elevator from the Contract and any option-to-renew period, or extension period.

* * *

Section 3.5 INITIAL PRICE QUOTATIONS AND ADJUSTMENT OF CONTRACT AMOUNT

Adjustments of Contract prices shall be as provided in Section 2.3 of the Contract.

3. The County and Schindler, for the remainder of the term of the Contract, shall have monthly performance meetings to address any matters that may positively or negatively affect the on-going business relationship between the parties under the Contract ("Monthly Meeting"). The Monthly Meetings may be used to discuss performance related issues, billing issues, conflicts that may arise from scheduling, imposition of liquidated damages, prompt payment or other payment issues or any other topic raised by either party which relates to the Contract. If a party has a good faith basis to believe that a specific person's attendance at a Monthly Meeting is necessary to a productive discussion concerning any such issues, that party may send such request in writing to the other party who shall then make reasonable efforts to procure the attendance of such specific person(s) at the Monthly Meeting or such other person as the responding party reasonably believes has the knowledge and authority to address the issue raised in the written request. The Monthly Meetings shall be considered the primary method to discuss any performance related concerns, and any interim verbal or written requests concerning performance related issues, or responses to such requests, may be deferred to the Monthly Meetings unless it is considered necessary by either party to engage in immediate dialogue concerning a specific performance related concern. The monthly meetings may be cancelled by mutual consent of the parties with notice by e-mail to the Chief Purchasing Officer, or her designee, successor or successor's designee on behalf of the County and to the Area General Manager or his designee, successor or successor's designee on behalf of Schindler.

4. Notwithstanding the provisions of Section 3.9 of the Contract to the contrary, prior to deducting liquidated damages from any monthly contract amount due, the County shall provide notice of the County's intent to impose liquidated damages ("Intent Notice") to Schindler, in writing, within thirty (30) days of discovery of an event which the County considers grounds for the imposition of such liquidated damages and provide Schindler an opportunity to dispute the imposition of such liquidated damages as further herein described. Each Intent Notice shall include a brief but specific description of the non-performance or other reason for the imposition of liquidated damages, the amount the County intends to deduct from a monthly payment, and whether the specific act of non-performance is subject to the multiplier provisions of Section 3.9 of the Contract. Schindler shall have ten (10) business days from receipt of any Intent Notice to dispute, in writing, the imposition of the liquidated damages ("Dispute Notice"). If no Dispute Notice is transmitted within ten (10) business days, the County may deduct the liquidated damages identified in the notice from a monthly contract payment. If a Dispute Notice is transmitted, the County and Schindler shall attempt to resolve the dispute amongst themselves or, if not resolved, at the next scheduled Monthly Meeting. In the event, the dispute is not resolved at the Monthly Meeting, Schindler may request review of the Intent Notice and an opportunity to be heard by the Director of the Internal Services Department within (10) business days of the Monthly Meeting at which the Dispute Notice was Discussed. In the event no request is made to the Director of the Internal Services Department to review the Intent Notice within ten (10) business days of the Monthly Meeting or the Director of the Internal Services Department agrees that liquidated damages should be imposed as set forth in the Intent Notice, liquidated damages in accordance with Section 3.9 of the Contract may be imposed by deduction from a monthly payment obligation.

5. In compliance with the requirements of the Section 1.2(H) of the Contract, the County shall dispute any invoice submitted in accordance with the provisions of Section 2.8 of the

Contract that the County deems to be improper within ten (10) days after the invoice is received by notifying Schindler that the invoice is improper, specifically identifying the disputed amount of the invoice and indicating the correction or corrective action that the County believes is necessary to make the invoice proper. If the County fails to dispute any invoice within ten (10) business days and/or fails to pay such invoice within thirty (30) calendar days, the County shall pay interest on any unpaid amounts at a rate of one percent per month on the unpaid balance commencing thirty (30) days after the due date of the invoice. The failure to dispute an invoice within ten (10) business days shall be deemed a waiver of any claims the County may have regarding the requirement to promptly pay such invoice but shall not constitute a waiver of any other legitimate claim the County may have with respect to such invoice.

In the event the County disputes an invoice, such dispute shall be discussed at the next scheduled Monthly Meeting between the County and Schindler. In the event the dispute is not resolved at the Monthly Meeting, Schindler may request resolution of the dispute by escalating the issue to the Manager, Office of Elevator Safety, or if not resolved, to the Director of the Facilities and Utilities Management Division or if not resolved, the Assistant Director, Internal Services Department, and/or the County may request resolution of the dispute by escalation to the Schindler Account Manager or if not resolved to the Schindler District General Manager; and either party may request resolution in accordance with Section 2-8.1.4 of the Code of Miami-Dade County.

6. The County expressly acknowledges and agrees that the Contract excludes the Miami-Dade Aviation Department from the User Access Program ("UAP") and the County will not take any UAP deduction on Miami-Dade Aviation Department invoices.

7. Schindler expressly acknowledges and agrees that monthly maintenance prices under the Contract covers all labor and material costs to perform testing and inspection of the equipment, as well as specified maintenance and repair services, covered by the Contract, subject to approved overtime as provided in Section 3.19 of the Contract, and Miami-Dade County shall not be responsible for any additional labor and material costs for such services over the then current monthly maintenance costs for such equipment.

8. To clarify and supplement, but not replace, the obligations in Paragraph 3.13(H), Schindler and the County mutually agree that in order to prevent build-up of lint and dirt, Schindler shall periodically (at least once per year) perform the following clean-down services:

> For elevators: Brush lint and dirt from the guide rails, overhead beams and sheaves, counterweight frames, car tops, bottom of platforms, pit equipment, machine-room floor, and hoist way door hangers and tracks.
>
> On escalators and moving walks: Properly barricade unit. Remove half the steps, and then move the remaining steps to the lower half of the escalator. Secure the unit from movement. Visually inspect the drip pans, undersides of steps, trusses, roller tracks, chains, handrails, and the interiors of balustrades, skirts, and newels. Verify that they are presently in good condition, and clean accumulated dirt, rubbish, and oil. Visually inspect the chains for lubrication and clean any buildup of dirt and grease. Move steps to upper half of the escalator and repeat procedure at lower end. Put unit back in service and check for normal operation. Remove barricading and turn over for public use.

All terms, covenants and conditions of the original Contract and any supplemental agreements or addendums issued thereto shall remain in full force and effect, except to the extent herein amended.

SS1245-3/27

Contractor	Miami-Dade County
By: [signature]	By: _____
Name: Glenn P. Rademacher	Name: Carlos A. Gimenez
Title: Area General Manager	Title: Mayor
Date: 1 June 2016	Date: _____
Attest: [signature] Corporate Secretary/Notary	Attest: _____ Clerk of the Board
Corporate Seal/Notary	Approved as to form and legal sufficiency
SANDRA L. BLAKE NOTARY PUBLIC MECKLENBURG COUNTY NORTH CAROLINA MY COMMISSION EXPIRES 3/24/2019	_____ Assistant County Attorney

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