



<b>Purchase Order</b>		 Marshall University Office of Purchasing One John Marshall Drive Huntington WV, 25755-4100 Direct all inquiries regarding this order to: (304) 696-2823		<b>Purchase Order #</b> MU17ELEVATOR	
TO:		Vendor Code:		Ship to: JOBSITE	
OTIS ELEVATOR 4768 CHIMNEY DR CHARLESTON WV 25302		FEIN: 13-5583389    PHONE:		Room #    N/A	
P.O. Date		FY		Buyer	
11/13/16		2017		JB	
Ship Via		F.O.B		Terms	
				Net 30	
Contract #					
<p style="text-align: center;"><b><u>CONTRACT ACCEPTANCE</u></b></p> <p>On behalf of the Governing Board, MARSHALL UNIVERSITY hereby accepts the quotation of <b>Otis Elevator Company</b></p> <p>signed by <b>Eric Painter</b></p> <p>Title <b>President</b></p> <p>On <b>March 15, 2016</b></p> <p>Approved as to form this _____ day of _____, 2015</p> <p style="text-align: center;">Patrick Morrissey, Attorney General</p> <p>By: <b>N/A</b></p> <p style="text-align: center;">Chief Counsel</p> <p><b>Elevator Service and Repair Contract</b> <b>September 1, 2016 - February 28, 2017</b></p> <p><i>Upon mutual agreement:</i> <b>Option to begin contract term March 1, 2017 with four (4) annual renewal periods (see Life of Contract page)</b></p> <p style="text-align: center;">THIS ORDER IS EXEMPT FROM ALL SALES TAX LIMIT EACH INVOICE TO A SINGLE PURCHASE ORDER NUMBER</p>					
Line No.		Fund		Org.	
1.		various		various	
2.					
3.					
4.					
Account		Encumber Amount		Total:	
various		Open-end		Open-End	
Mail Original Invoice and 1 Copy to: Marshall University Accounts Payable One John Marshall Drive Huntington, WV 25755-4500					
 Authorized Signature					
11-18-16 Date					

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# 1. PRICING

## 1.1. Maintenance

### Academic and Administrative Bldgs. Forensic Science Bldg. – Huntington

Item#	Elevator	Building	Brand	Type	Monthly	Yearly
#1-1	D91076	Bio Med				
#1-2	D91077	Biotechnology Building BIO MED 1	Thyssen-Krupp	Hydraulic	\$100.00	\$1,200.00
#1-3	D91078	Biotechnology Building BIO MED 2	Thyssen-Krupp	Hydraulic	\$100.00	\$1,200.00
#1-4	D91079	Biotechnology Building BIO MED 3	Thyssen-Krupp	Hydraulic	\$100.00	\$1,200.00
#1-5	C30392	East Hall #1	Cotton	Hydraulic	\$100.00	\$1,200.00
#1-6	C30390	Corbly Hall East ELV 2	Dover	Hydraulic	\$100.00	\$1,200.00
#1-7	C30391	Corbly Hall West ELV 1	Dover	Hydraulic	\$100.00	\$1,200.00
#1-8	D08118	Drinko Library LIB DMC #1	Dover	Hydraulic	\$100.00	\$1,200.00
#1-9	D08119	Drinko Library LIB DMC #2	Dover	Hydraulic	\$100.00	\$1,200.00
#1-10	D08120	Drinko Library LIB FRT	Dover	Hydraulic	\$100.00	\$1,200.00
#1-11	C07373	Fine Arts	Dover	Hydraulic	\$100.00	\$1,200.00
#1-12	C07374	Fine Arts	Dover	Hydraulic	\$100.00	\$1,200.00
#1-13	C30381	Harris Hall	Armor	Hydraulic	\$100.00	\$1,200.00
#1-14	F15520	Harris Hall -2	Thyssen-Krupp	Hydraulic	\$100.00	\$1,200.00
#1-15	C30382	Jenkins Hall	Dover	Hydraulic	\$100.00	\$1,200.00
#1-16	D26035	Jamie Jazz Center JAOMI JAZZ CTR.	Dover	Hydraulic	\$100.00	\$1,200.00
#1-17		Morrow Library	Inclinator	Wheel Chair	\$100.00	\$1,200.00
#1-18	C30373	Morrow Library East	Dover	Hydraulic	\$100.00	\$1,200.00
#1-19	D30374	Morrow Library West OLD LIBRY WEST	Dover	Hydraulic	\$100.00	\$1,200.00
#1-20	D18292	Old Main OLD MAIN HYDRO	Otis	Hydraulic	\$100.00	\$1,200.00
#1-21	C30384	Prichard Hall Hydro	Cotton	Hydraulic	\$100.00	\$1,200.00
#1-22	C30385	Prichard Hall Traction	Westinghouse	Cable	\$196.00	\$2,352.00
#1-23		REDC	Plunger Lift	Hydraulic	\$100.00	\$1,200.00
#1-24	C07371	Science Hall East	Dover	Hydraulic	\$100.00	\$1,200.00
#1-25	C07372	Science Hall West	Dover	Hydraulic	\$100.00	\$1,200.00
#1-26	C46263	Smith Hall RH NEW S. ELV	Dover	Cable	\$196.00	\$2,352.00
#1-27	C46264	Smith Hall MID NEW ELV	Dover	Cable	\$196.00	\$2,352.00
#1-28	C46265	Smith Hall LH NEW ELV	Dover	Cable	\$196.00	\$2,352.00
#1-29	C30389	Smith Hall – Old Music Hall	Dover	Cable	\$196.00	\$2,352.00
#1-30	C30388	Smith Music Hall	Haughton	Hydraulic	\$100.00	\$1,200.00
#1-31	C30395	Sorrell Maintenance Lift 1 Maint Bldg.	Plunger Lift	Hydraulic	\$100.00	\$1,200.00
#1-32	616657	Visual Arts ELV 2	Otis	Gen 2	\$196.00	\$2,352.00
#1-33	615656	Visual Arts ELV 1	Otis	Gen 2	\$196.00	\$2,352.00
#1-34		Weisberg Engineering	Otis	Gen 2	\$196.00	\$2,352.00
#1-35		Weisberg Engineering	Otis	Gen 2	\$196.00	\$2,352.00
#1-36		Weisberg Engineering	Otis	Gen 2	\$196.00	\$2,352.00
#1-37	F55835	Welcome Center	Thyssen-Krupp	Hydraulic	\$100.00	\$1,200.00
Athletics						
#2-1	C07368	Stadium	Dover	Cable	\$196.00	\$2,352.00
#2-2	C07369	Stadium	Dover	Cable	\$196.00	\$2,352.00
#2-3		Stadium	Thyssen-Krupp	Cable	\$196.00	\$2,352.00
#2-4	C07370	Facilities Bldg. (Shcwey Building)	Dover	Hydraulic	\$100.00	\$1,200.00
#2-5	901156	Henderson Center	Otis	Hydraulic	\$100.00	\$1,200.00
#2-6	N/A	Chris Cline Athletic Complex (Indoor Practice Facility)	Still under warranty – not added to contract at this time			

Forensics						
#3-1	D90117	Forensic Science Building FORENSIC 1	Thyssen-Krupp	Hydraulic	\$100.00	\$1,200.00
#3-2	243981	Forensic Science Annex FORENSIC 2	Otis	Hydraulic	\$100.00	\$1,200.00
Housing and Residence Life (HRL) – Huntington						
Item#	Elevator	Building	Brand	Type	Monthly	Yearly
#4-1	C30379	Buskirk Hall West BUSKIRK WEST	Otis	Cable	\$196.00	\$2,352.00
#4-2	C30380	Buskirk Hall East BUSKIRK EAST				
#4-3	206818	Holderby Hall East HOLDERBY EAST	Otis	Cable	\$196.00	\$2,352.00
#4-4	206819	Holderby Hall West HOLDERBY WEST	Otis	Cable	\$196.00	\$2,352.00
#4-5	205416	Holderby Hall Cafe (Freight) HOLDERBY CAFE	Otis	Cable	\$196.00	\$2,352.00
#4-6	207004	Twin Towers East -1 TWIN TWR E #1	Otis	Cable	\$280.00	\$3,360.00
#4-7	207005	Twin Towers East -2 TWIN TWR E #2	Otis	Cable	\$280.00	\$3,360.00
#4-8	207006	Twin Towers East -3 TWIN TWR E #3	Otis	Cable	\$280.00	\$3,360.00
#4-9	207007	Twin Towers West -1 TWIN TWR W #1	Otis	Cable	\$280.00	\$3,360.00
#4-10	207008	Twin Towers West -2 TWIN TWR W #2	Otis	Cable	\$280.00	\$3,360.00
#4-11	207009	Twin Towers West -3 TWIN TWR W #3	Otis	Cable	\$280.00	\$3,360.00
#4-12	F21188	Wellman Hall WELLMAN	Schindler	Hydraulic	\$100.00	\$1,200.00
#4-13	F21190	Gibson Hall GIBSON	Schindler	Hydraulic	\$100.00	\$1,200.00
#4-14	F21191	Haymaker Hall HAYMAKER	Schindler	Hydraulic	\$100.00	\$1,200.00
#4-15	F21192	Willis Hall WILLIS	Schindler	Hydraulic	\$100.00	\$1,200.00
#4-16		Buskirk Wheelchair Lift added				
Auxiliary Services – Huntington						
Item#	Elevator	Building	Brand	Type	Monthly	Yearly
#5-1	D17469	Memorial Student Center STUD. CENTR FRT	White	Hydraulic	\$100.00	\$1,200.00
#5-2	C30360	Memorial Student Center Rec Rm PASS REC RM	White	Hydraulic	\$100.00	\$1,200.00
#5-3	C30361	Memorial Student Center Bookstore SVC BOOKSTORE SVC	White	Hydraulic	\$100.00	\$1,200.00
#5-4	C30359	Memorial Student Center Kitchen MEM SS KITCHEN	PFlow Industries	Lift	\$100.00	\$1,200.00
School of Medicine – Spring Valley						
Item#	Elevator	Building	Brand	Type	Monthly	Yearly
#6-1	C45770	Medical Education Bldg. 1543 SPRINGVALY	Murphy	Hydraulic	\$100.00	\$1,200.00
#6-2	C45771	Medical Education Bldg. 1542 SPRINGVALY	Murphy	Hydraulic	\$100.00	\$1,200.00
MU School of Medicine – Huntington						
Item#	Elevator	Building	Brand	Type	Monthly	Yearly
#7-1	D08121	Medical Education Bldg. DUPLEX 1	Thyssen-Krupp	Hydraulic	\$100.00	\$1,200.00
#7-2	D08123	Medical Education Bldg. DUPLEX 2	Thyssen-Krupp	Hydraulic	\$100.00	\$1,200.00
#7-3	D08124	Medical Education Bldg. SINGLE FRNT 1	Thyssen-Krupp	Hydraulic	\$100.00	\$1,200.00
#7-4	D08125	Medical School FRT	Dover	Cable	\$196.00	\$2,352.00
#7-5	D26627	Medical School MED SCHOOL T50	Dover	Cable	\$196.00	\$2,352.00
#7-6	D26645	Medical School CLINICAL 1	Dover	Cable	\$196.00	\$2,352.00
#7-7	D26646	Medical School CLINICAL 2	Dover/Thyssen-Krupp	Cable	\$196.00	\$2,352.00
#7-8	D26793	Medical School CLINICAL FRT	Thyssen-Krupp	Cable	\$196.00	\$2,352.00
#7-9		Douglass Center	Schindler	Hydraulic	\$100.00	\$1,200.00
Public Safety – Huntington						
Item#	Elevator	Building	Brand	Type	Monthly	Yearly
#8-1	D78213	Parking Garage 3rd Avenue E. PKG	Thyssen-Krupp	Hydraulic	\$100.00	\$1,200.00
#8-2	D78216	Parking Garage 3rd Avenue W, PKG				
#8-3	F44264	Parking Garage 6TH AVE GRG #1	Thyssen-Krupp	Hydraulic	\$100.00	\$1,200.00
#8-4	F44552	Parking Garage 6TH AVE GRG #2				

## 1.2. Addition or Deletion of Elevator Units

The elevators to be serviced and maintained under this contract are specified above. Any unit added or deleted by the University from original listing will result in an equitable adjustment to the contract price. If added, the price will be negotiated by the parties. If a unit is deleted, the price as then in effect on said individual unit will be prorated over the remainder of the term of this agreement, and so subtracted from the amount due under this agreement. If the University chooses to modernize any unit, the modernized unit may be deleted by the University from the agreement for the term of the warranty period of the modernized elevator.

## 1.3. Non-Routine / Materials

Item#	Description	Amount	Unit of Measure
#9-1	Non-Routine Repairs Mechanic Helper / Emergency / On-Call Mechanic Helper (off-site) / Stand-By Mechanic Helper	\$128.00	Hourly
#9-2	Non-Routine Repairs Mechanic / On-Call Mechanic (off-site) / Stand-By Mechanic / Emergency	\$160.00	Hourly
#9-3	Non-Routine Repairs Mechanic Helper Saturday/Sunday/On-Call Mechanic Helper (off-site) Saturday/Sunday/ Stand-By Mechanic Helper	\$256.00	Hourly
#9-4	Non-Routine Repairs Mechanic Saturday/Sunday/On-Call Mechanic (off-site) Saturday/Sunday Stand-By Mechanic Saturday/Sunday/ Non-Routine Repairs Mechanic Holiday / On-Call Mechanic (off-site) Holiday / Stand-By Mechanic Holiday	\$320.00	Hourly
<p><b>QUOTATIONS</b></p> <p>When an identified need for repair or replacement is determined to fall outside the scope of covered maintenance, the contractor shall provide:</p> <ul style="list-style-type: none"> <li>• A written assessment of the extent and scope of the repair.</li> <li>• A written timeline to complete the repair.</li> <li>• A written price estimate.</li> </ul> <p>The price estimate shall include the cost of parts, and all labor and travel, but shall not include "per diem" costs for meals and lodging. Thresholds of spend dictate whether the work will be assigned to the contractor or if bids are required. If the proposed cost is determined to be fair and reasonable, and the cost falls below the threshold of bidding out, the University will proceed to assign the work to the contractor. If the cost falls above the threshold, the University will determine if a bid is needed.</p> <p><b><u>No work shall be performed</u></b> until the University issues a written notice to proceed to the contractor.</p>			
<p><b>MATERIALS</b></p> <p>Contractor markup on materials required to perform the services described herein shall be fixed for the term of the agreement. In no case, shall contractor's mark up for materials exceed fifteen percent (15%).</p>			



## 2. SCOPE OF WORK, SPECIFICATIONS, TECHNICAL REQUIREMENTS

### 2.1. Work Included

The contractor shall provide all labor, tools, materials, equipment and all incidentals required and/or implied for the complete and satisfactory maintenance and repair of Marshall University's elevators, escalators and chairlifts. This work shall include, but not be limited to preventive maintenance, servicing, repairs, testing, and modifications as required to keep the elevator equipment in first class working order.

### 2.2. Routine Maintenance and Services

Routine maintenance and servicing, including repairs, shall be performed as necessary to keep equipment operating properly and to minimize malfunctions and down time. Other maintenance and repairs required due to malfunctions occurring between preventive maintenance calls shall be performed as necessary on a call basis. All maintenance and repairs are included in the Routine Maintenance and Servicing and corresponding monthly rates, except that defined as non-routine repairs.

### 2.3. Formal/Informal Training

The Vendor will provide formal/informal training, as necessary, so that University personnel understand the operation and diagnostic procedures necessary to keep the equipment operating in the most beneficial manner. Vendor will also provide documentation regarding any upgrades to industry standards. Contractor to provide Training for Employees – Factory training, refresher training, etc. on a specific schedule.

### 2.4. Service Improvements

The Vendor shall keep the University abreast of all equipment changes and product improvements and explore new and better methods to enhance the University's preventive maintenance service agreement capabilities, and enhancements to plant operations. It shall be the Vendor's duty to notify the University of any Changes, improvements, methods, etc., as they occur, so that the University may enhance its operations and maintenance program.

### 2.5. Notifications and Response Time(s)

Contractor must have Dispatch Service – After working hours, holidays, weekends, etc.

Notify the Contract Administrator or his designee 72 hours in advance of the maintenance services to allow a University representative to accompany Contractor during regular maintenance (if necessary); Scheduled field work shall not be delayed.

### 2.6. Work Hours

Except for emergency call back service and elevator repairs, all work shall be performed during regular working hours of regular working days of the trade.

Service hours and 24-hour callback service are considered an integral part of the maintenance service to be provided. Contractor is expected to provide the necessary service capabilities in order to properly execute the provisions of this contract. Unless otherwise directed by the University's designated project manager, contractor must respond as follows:

Standard Service Call – Replace/repair elevator equipment within 48 hours of notification and otherwise as practicable.

**Emergency Service Call** – Providing emergency call-back services, which consists of promptly responding to requests from the University by telephone or otherwise, for emergency at any hour, day or night. CONTRACTOR shall respond on-site within **thirty minutes** from notification for all emergency calls requiring extrication of passengers (including weekends). Mechanic must arrive on campus, Monday – Friday, 8:00 a.m. – 4:00 p.m., within thirty minutes of problem notification.

Contractor and sub-contractors must provide the University with 24-hour contact number(s) for contractor's key personnel and an acceptable means of emergency "on-call" communication with the University's designated project manager.

Contractor's offices must have voice, fax and e-mail capability.

## 2.7. Non-Routine Repairs

Repairs which are needed due to non-routine malfunctions and failures will not be included in the lump sum monthly rates, but shall be performed on an hourly rate basis by the qualified elevator mechanic, and helper if required. Marshall University reserves the right to bid separately any of these repair projects estimated to cost over \$50,000. Non-routine repairs and failures include:

1. Repairs needed due to vandalism or acts of God.
2. Repairs on hydraulic jacks and casings, and on underground piping from the hydraulic reservoir.
3. Modifications or repairs needed to bring elevators up to standard in accordance with ANSI/ASME A17.1 and ANSI/ASME A17.2 Inspectors' Manual for Elevators and Escalators. This only applies to deficiencies which exist at the time of award of contract, or those which occur due to code changes.
4. Any repair or maintenance of elevator equipment not included in the scope of services as listed in this document.

## 2.8. Repairs outside Scope

Should inspection(s) indicate that repairs are necessary that are outside the scope of this agreement, the Vendor shall provide the University a written quotation including the scope of work to be performed as well as labor, parts, material, and related expenses for these repairs. The University has the option to accept and issue a new Purchase Order implementing such repairs. However, the University retains the option to procure prices from others if deemed necessary. Should alterations, additions, adjustments, or repairs be made by others to any part of the system(s) covered by this service agreement, the Vendor has the right to inspect such work as to having been performed in an acceptable manner to the Vendor prior to continuing the service agreement coverage. The Vendor will notify the University in writing of such conditions, which must be corrected prior to the Vendor acceptance.

## 2.9. Additional Services Not Listed in Contract

University may request and Vendor must provide written bids for additional studies, software, services, or other items not covered by this agreement. These additional service bids are subject to acceptance by the University.



## 2.10. Testing

The contractor shall perform all testing as required by ANSI/ASME A17.1 and A17.2 to include the one-year tests, three-year tests, and five-year tests.

Testing of Hydraulic Elevators: Elevators must be tested according to the local and state codes Pressure Relief Test must be performed according to the State of WV Code.

Marshall University reserves the right to conduct any test or inspection it may deem advisable to assure supplies and services conform to the specifications.

Extra testing which may be required and which is outside of the scope of the testing defined above.

## 2.11. Parts Inventory

Keep on vendor's site, a supply of commonly used replacement parts, lubricants and wiping cloths for the performance of routine maintenance and parts replacement. The parts stock for all equipment covered herein shall be based on the equipment manufacturer's recommendations for routine expendable parts, normal yearly replacement parts, and multi-year replacement parts. The Vendor has the option of stocking locally or by having access to immediate delivery of the parts for the purpose of providing unscheduled service parts on an emergency basis. The Vendor is expected to have emergency parts available to the University in a reasonable length of time (24 hours) to minimize equipment down time.

## 2.12. Asbestos

Whenever and wherever during the course of performing any work under this contract, if the contractor discovers the presence of asbestos or suspect that asbestos is present, he shall stop the work immediately, secure the area, notify Marshall University and await positive identification of the suspect material. During the downtime in such a case, the contractor shall not disturb any surrounding surface.

## 2.1. Hazardous Substances.

Successful Vendor shall not cause or permit any Hazardous Substance to be used, stored, generated, or disposed of on or in the University's property. If Hazardous Substances are used, stored, generated, or disposed of on or in the University's property by the Successful Vendor or if the University's property becomes contaminated in any manner through the acts or omissions of the Successful Vendor, the Successful Vendor shall be responsible for any and all necessary actions, investigation, remediation, monitoring, restoration, cleanup or decontamination necessary to return the University's property to the condition existing prior to the presence of any such Hazardous Substance in accordance with all applicable laws. As used herein, "Hazardous Substance" means any substance that is toxic, ignitable, reactive, or corrosive and that is regulated by any local government, the State of West Virginia, or the United States Government.

## 2.1. Waste Oil Disposal

Disposal of all waste oil will be the responsibility of the Vendor. Waste oil will constitute any oil removal from any piece of equipment that is a part of this agreement. All oil removed from serviced equipment will be classified as waste oil and is to be disposed of within the guidelines of EPA regulations. This includes all reports and manifests associated with tracking the waste oil to its final deposition. The Vendor shall provide copies of disposal certification to all required governmental organizations, as well as the Environmental Health & Safety Department

(EH&S) of MU, and the University Designated Representative. No oil containers shall be stored at any MU site.

## 2.2. Audit

The contractor hereby agrees to retain all books, records, and other documents relative to this contract for five years after final payment, or until audited by the State of West Virginia, whichever is sooner. Marshall University, its authorized agents, and/or state auditors shall have full access to and the right to examine any of said materials during said period.

## 2.3. Reporting To Owner

The Contractor is to report to the personnel listed in Exhibit A and will cooperate and confer with them as necessary to insure satisfactory work progress.

## 2.4. Reports

All reports, estimates, memoranda and documents submitted by the Contractor must be dated and bear the Contractor's name. All reports made in connection with these services are subject to review and final approval by the Marshall University.

**Performance Conferences and Reports:** At the end of each ninety (90) day period the Vendor shall meet with the University designated Representative to review performance and schedule major repairs contemplated during the next ninety (90) day period. The Vendor shall submit written performance reports at the end of each ninety (90) day period. Please provide example of such logs that your company may provide.

**Checking In and Out and Communications:** The Vendor's personnel shall report every day at a mutually agreed time and place prior to commencing work and check out after completing the work. This requirement applies to regular maintenance, repairs and callbacks. At time of check-in, the University designated Representative shall provide Vendor's personnel with a list of any reported problems requiring the Vendor's attention. Please provide example of such logs that your company may provide to facilitate these communications. The Vendor shall provide cell phones and two (2) way radios for their on campus personnel. The cell phones must be operable in all locations.

**Time Sheets:** Each time an elevator is serviced, inspected, repaired, etc., whether emergency or regular, a report on an approved form shall be submitted to the University designated Representative within twenty-four (24) hours following the service work. Nights, holidays, and weekends service reports are to be submitted the next regular work day. The time sheet or ticket shall include the date the work was performed, a description of the work performed, and the elevator number the work was performed on, along with the building name and number. Acceptance of work is subject to approval by the University designated Representative. Signing of daily work reports is not considered approval

## 2.1. Parking

The Successful Vendor shall obtain all parking permits and/or decals that may be required while performing project work on University premises. Personal vehicles will not be permitted on campus. The Successful Vendor should contact the Marshall University Parking & Public Transportation Services, (304) 696-6406, (304) 696-6648, or (304) 696-6684, Monday – Friday 8:00am to 4:30pm., to become familiar with Contractor and Vendor Parking Rules, <http://www.marshall.edu/parking/>

### 3. AGREEMENT TERMS AND CONDITIONS

The following are the Terms and Conditions that will become part of any Agreement consummated between the University and the Successful Vendor. In the event of a conflict between any provisions contained in any of the documents governing this transaction, the following shall be the order of precedence: Amendments to the Agreement, Agreement, Addenda to Request for Bid, Request for Bid, Bid Response.

#### 3.1. Contract Documents

The contract entered into by the parties shall consist of the Invitation for Bids, the signed bid submitted by the contractor, the Marshall University Contract Form, General Terms and conditions, Specifications, and Attachments, including all modifications thereof, all of which shall be referred to collectively as the Contract Documents.

#### 3.2. Term of Agreement

The term of this Agreement will be for an initial period of six months, subject to renewal annually based on satisfactory performance and the written approval of both parties.

#### 3.3. Default

In case of failure to deliver goods or services in accordance with the contract terms and conditions, Marshall University after due oral or written notice, may procure substitute goods or services from other sources and hold the contractor responsible for any resulting additional purchasing and administrative costs. This remedy shall be in addition to any other remedies which Marshall University may have.

#### 3.4. Assignment of Contract

A contract shall not be assignable by the contractor in whole or in part without the written consent of Marshall University.

#### 3.5. Advertising and Use of University Name

The Successful Vendor shall not advertise or publish information concerning the Agreement without prior written consent of the University. Successful Vendor shall not use the name of the University or any employee, agent, or affiliate of University in any sales promotion, advertising, or any other form of publicity without the prior written consent of University in each case.

#### 3.6. Antitrust

By entering into a contract, the bidder conveys, sells, assigns, and transfers to Marshall University all rights, title and interest in and to all causes of the action it may now or hereafter acquire under the Antitrust Laws of the United States and the state of West Virginia, relating to the particular goods or services purchased or acquired by Marshall University under said contract.

### 3.7. Ethics in Public Contracting

By submitting their bids, all bidders certify that their bids are made without collusion or fraud and that they have not offered or received any kickbacks or inducements from any other bidder, supplier, manufacturer, or subcontractor in connection with their bid, and that they have not conferred on any public employee having official responsibility for this procurement transaction any payment, loan, subscription, advance, deposit or money, services or anything of more than nominal value, present or promised, unless consideration of substantially equal or greater value was exchanged.

### 3.8. Anti-Discrimination

By submitting their bids, all bidders certify to Marshall University that they will conform to the provisions of the Federal Civil Rights Act of 1964, as amended.

The contractor will not discriminate against employee or applicant for employment because of race, religion, color, sex or national origin, except where religion, sex or national origin is a bona fide occupational qualification reasonably necessary to the normal operation of the contractor. The contractor agrees to post in conspicuous places, available to employees and applicants for equipment, notices setting forth the provisions of this nondiscrimination clause.

The contractor, in all solicitations or advertisements for employees placed by or on behalf of the contractor, will state that such contractor is an equal opportunity employer.

Notices, advertisements and solicitations placed in accordance with federal law, rule or regulation shall be deemed sufficient for the purpose of meeting the requirements of this section.

EEO/AA Statement: Marshall University, An Equal Opportunity Affirmative Action institution, advises all contractors, subcontractors, vendors and suppliers that direct or indirect receipt of federal funds may require appropriate action on their part.

Immigration Reform and Control Act of 1986: By signing this bid, the bidder certifies that it does not and will not during the performance of this contract employ illegal alien workers or otherwise violate the provisions of the Federal Immigration Reform and Control Act of 1986.

### 3.9. Debarment Status

By submitting their bids, all bidders certify that they are not currently debarred from bidding on contracts by any agency of the state of West Virginia, nor are they an agent of any person or entity that is currently debarred from submitting bids on contracts by any agency of the state of West Virginia.

### 3.10. Applicable Law and Courts

Any contract resulting from this invitation for bid shall be governed in all respects by the laws of the state of West Virginia and any litigation with respect thereto shall be brought in the courts of the state of West Virginia. The contractor shall comply with applicable federal, state, and local laws and regulations.

### 3.11. Right of Offset

The University shall be entitled to offset against any sums due the Successful Vendor, any expenses or costs incurred by the University, or damages assessed by the University concerning the Successful Vendor's non-conforming performance or failure to perform the Agreement, or any other debt owing the University, including expenses, costs and damages described in the termination provisions contained herein.

### 3.12. Failure to Perform

Vendor shall guarantee all work required during the Agreement for a period of ninety (90) days after the termination date. Should the University determine during the contract period or within thirty (30) days after termination that any required work has been performed improperly or not performed at all; the Vendor shall, after mailing of written notifications by the University, correct said difficulty within fourteen (14) days. Failure to correct will be construed as default of the contract and the University may secure others to perform the services and deduct the cost of these services from the contractual amount due under the contract. All maintenance deficiencies brought to the Vendor's attention during the Agreement by the University which are the responsibility of the Vendor, shall be corrected. The University reserves the right to engage an independent party to perform an inspection to determine responsibility. Direct Costs and Material Markup

### 3.13. Drug Free Workplace

The Successful Vendor agrees that in the performance of the Agreement, neither the Successful Vendor nor any employee of the Successful Vendor shall engage in the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance in conducting any activity covered by the Agreement. The University reserves the right to request a copy of the Successful Vendor's Drug Free Workplace Policy. The Successful Vendor further agrees to complete and submit the Drug Free Workplace Affidavit for services required.

### 3.14. Termination for Convenience

The University reserves the right to terminate the Agreement in whole or part at any time when in the best interests of the University without penalty or cause upon 60 days written notice to the contractor. Upon receipt of the written notice, the Successful Vendor shall immediately stop all work as directed in the notice, notify all subcontractors of the effective date of the termination and minimize all further costs to the University. In the event of termination under this provision, all documents, data and reports prepared by the Successful Vendor under the Agreement shall become the property of and delivered to the University. The Successful Vendor shall be entitled to receive just and equitable compensation for work in progress, work completed and materials accepted before the effective date of termination. Such compensation shall be the Successful Vendor's sole remedy against the University in the event of termination under this provision.

In the event the initial contract period is for more than 12 months, the resulting contract may be terminated by either party, without penalty, after the initial 12 months of the contract period upon 60 days written notice to the other party. Any contract cancellation notice shall not relieve the contractor of the obligation to deliver and/or perform on all outstanding orders issued prior to the effective date of cancellation

### 3.15. Termination for Default

The University reserves the right to terminate the Agreement in whole or in part due to the failure of the Successful Vendor to comply with any term or condition of the Agreement, to acquire and maintain all required insurance policies, bonds, licenses and permits, or to make satisfactory progress in performing the Agreement. The University shall provide written notice of the termination and the reasons for it to the Successful Vendor. Upon termination under this provision, all goods, materials, documents, data and reports prepared by the Successful Vendor under the Agreement shall become the property of and be

delivered to the University on demand. The University may, upon termination of the Agreement, procure, on terms and in the manner that it deems appropriate, materials, or services to replace those under the Agreement. The Successful Vendor shall be liable to the University for any Excess Costs incurred by the University in re-procuring the materials or services.

### 3.16. Payment Terms

The University's obligation is payable only and solely from funds appropriated for the purpose of the Agreement. Unless otherwise stated herein, the payment terms for the Agreement are Net 30 days from the date of receipt of invoice by MU Fiscal Authority.

Invoices: Invoices for services ordered, delivered and accepted by Marshall University shall be submitted by the contractor direct to the payment address shown on the contract. All invoices shall show the Marshall University contract number. Provide a status report, attached to each invoice, for each station after each maintenance visit documenting all services performed. The report shall be submitted to the University Representative within forty eight (48) hours from the completion of the maintenance services.

#### Availability of Funds

It is understood and agreed between the parties herein that MU shall be bound hereunder only to the extent of the funds available or which may hereafter become available for the purpose of this agreement.

### 3.17. Non-Appropriation

Pursuant to the West Virginia Constitution, the State cannot enter into any contract or agreement which would obligate the Legislature beyond the current fiscal year. Therefore, goods to be delivered and/or services to be performed under this contract or agreement are to be continued in succeeding fiscal years for the term of the contract or agreement and any subsequent renewals, contingent upon funds being appropriated by the Legislature for the goods and/or services. In the event of non-appropriation of funds for the goods and/or services, the payments including any interest, shall be canceled in whole, without penalty to the State at the end of the then current fiscal year, with this contract or agreement becoming null and void after June 30. The State shall return any equipment not paid for to the vendor, together with a release of the State's title and interest therein. The State spending unit will make reasonable efforts to obtain the necessary funds to avoid cancellation of the contract or agreement, and will provide written notice to the vendor in the event of non-appropriation thirty (30) days prior to the end of the fiscal year in which such non-appropriation for the next fiscal year occurs.

However, in accordance with B 12-3-12 of the West Virginia Code, appropriations for buildings and land shall remain in effect, and shall not be deemed to have expired until the end of the three years after the passage of the act by which such appropriations are made.

### 3.18. Change Requests

Marshall University may request changes in the contract performance, within the general scope of the contract. The contractor shall promptly comply with the notice and shall make all subsequent performance of services in conformity to the notice. If any such change causes an increase or decrease in the contractor's cost of performance or the time required for performance, an equitable adjustment in the contract price and/or the time allowed for performance of the contract shall be negotiated and the contract modified accordingly by written supplemental agreement. Any claim by the contractor for adjustment under this clause must be asserted by written notice to Marshall University within 30 days

from the date of receipt by the contractor of the change notice. If the parties fail to agree to an adjustment, the question of an increase or decrease in the contract price or time allowed for performance shall be resolved in accordance with the procedures for resolving disputes provided by the State of West Virginia Higher Education Rules and Regulations. Neither the existence of a claim, a dispute, process, litigation or any portion of this provision or CHANGES shall excuse the contractor from promptly proceeding with performance of the contract as changes by the notice.

### 3.19. Price Adjustment

Vendor will submit requests for price adjustments to MU in writing (including e-mail) at least thirty (30) days in advance of price adjustment implementation. Price Adjustment Requests will be made on a good faith basis. The requests for price adjustments submitted will include information demonstrating the estimated effect to MU of the price adjustment, in both dollar amount and percentage of total spend based on the prior contract period. For purposes of calculation, "Prior Contract Period" will be defined as the preceding twelve (12) month period from the date of the Price Adjustment Request. MU will respond to Price Adjustment Requests in writing (including e-mail). Price Adjustment Requests will be reviewed by MU.

### 3.20. Indemnification

The contractor agrees to be responsible for and indemnify, defend and hold harmless MU and the State of West Virginia and their officers, agents, and employees from any claims, damages and actions of any kind or nature whether at law or in equity, arising from or caused by the use of any materials, goods, or equipment of any kind or nature furnished by the contractor/any services of any kind or nature provided by the contractor, provided that such liability is not attributable to the sole negligence of Marshall University or to failure of Marshall University to use the materials, goods, or equipment in the manner already and permanently described by the contractor on the materials, goods or equipment delivered. The contractor agrees, indemnify and save harmless Marshall University and the State of West Virginia payment of all sums of money by reason of any claim against Marshall University and the State of West Virginia or their representatives under the Workmen's Compensation Act, and by reason of all or any other occurrences resulting in bodily injury or property damage that may happen to occur upon or about said work. The contractor agrees that it will, at all times, and at least for one year after the completion of the work, indemnify and save harmless Marshall University and the State of West Virginia against liabilities resulting from bodily injury or property damage directly or indirectly arising out of the performance or nonperformance of the contract.

### 3.21. Independent Contractor

The contractor shall not be an employee of Marshall University, but shall be an independent contractor. Nothing in this agreement shall be construed as authority for the contractor to make commitments which shall bind Marshall University, or to otherwise act on behalf of Marshall University, except as Marshall University may expressly authorize in writing.

### 3.22. Public Records

All bid information submitted and opened becomes subject to the Public Records Law



3.23. Insurance

The contractor shall provide Marshall University with a State of West Virginia Certificate of Insurance. Any other insurance form approved by the State of West Virginia prior to the start of any job or work, and agrees to maintain such insurance until the completion of the project or contract.

3.24. Protection of Persons and Property

The contractor shall take every precaution at all times for the protection of persons and property, including Marshall University's employees and property and its own. The contractor shall be responsible for initiating, maintaining and supervising all safety precautions and programs in connection with work under this contract.

The contractor shall continuously maintain adequate protection of all work from damage and shall protect Marshall University's property from injury or loss arising in connection with this contract. The contractor shall make good any such damage, injury or loss, except such as may be directly due to errors in the Contract Document or caused by agents or employees of Marshall University.

In an emergency affecting the safety or life of individuals, or of the Work, or of adjoining property, the contractor, without special instruction or authorization from Marshall University, is hereby permitted to act, at its discretion, to prevent such threatened loss or injury. Also, should the contractor in order to prevent threatened loss or injury, be instructed or authorized to act by Marshall University, he shall so act, without appeal. Emergency must be deemed necessary.

3.25. Claims

If at any time or times any claim or claim shall be made to Marshall University by a subcontractor or other persons for any money due for any work, labor or material done upon or supplied upon the work, labor or material done upon or supplied upon the work herein contracted for, done for, furnished, or supplied, to the party of the first part, Marshall University may retain such amount as may be due, or may thereafter become due under this contract, or may thereafter become due under this contract, or may pay the same when said claim shall thereafter be finally established in court, and such amount is hereby assigned to Marshall University to pay such claim or claims, such payment to be done when so established, but the contractor shall not be entitled to demand or receive payment of this agreement until all disputes, disagreements, and questions between the parties herein affecting the right to any portion of the amount claimed, shall have been settled above provided for, and Marshall University is hereby authorized to deduct from the said amount any money due it upon any account or claim.

3.26. Safety Program

The contractor shall maintain an adequate safety program to insure the safety of contractor employees, subcontractor employees, and all other individuals working under this contract. The contractor must provide Marshall University with a written safety program that he intends to follow in pursuing work under this contract. No work under this contract will be permitted until Marshall University is assured that the contractor has an adequate safety program in effect.

### 3.27. Housekeeping

Work areas shall be maintained in a clean and safe condition at all times by the vendor. All combustible and hazardous materials shall be handled and stored in compliance with University, State and Federal safety codes and regulations. Should leakage, spillage or other sort of damage occur, due to improper maintenance by the Vendor or a reasonably preventable cause that the Vendor did not see or correct, then the Vendor is responsible for clean-up and both property and monetary damages.

### 3.28. Workmanship:

All work shall be quality work performed according to the standards of the industry, and to the complete satisfaction of Marshall University. All work shall be performed in accordance with the latest version of ANST.A17.1 Safety Code for Elevators and Escalators and the West Virginia Division of Labor, Elevator Safety Act. The contractor shall establish and follow a quality control program for the purpose of identifying and correcting deficiencies in the work before the level of service becomes unacceptable to Marshall University. Except as specified otherwise by ANSI/ASME A17.1, equipment shall be maintained to operate at the manufacturer's originally specified performance levels or better.

Contractor agrees to provide adequate supervision, and take necessary measures to assure that all work is completed in a workmanlike manner. Contractor agrees to perform the work assigned under this contract in a workmanlike manner by qualified, careful and efficient workers. In the event of substandard workmanship or defective materials furnished by the contractor as may be determined by inspection of the University or in the event of poor working performance as may be determined by the University's designated project manager, the University may at any time, require the contractor to expeditiously remedy such failure or defect, at no cost to the University.

Workmanship may be determined to be substandard if the work is incomplete, inadequately installed or supported, poorly fitted or sealed, damaged, improperly finished, or installed in a manner that the operation or the maintainability of the installation is impaired beyond the limits specified or indicated by the agreement.

Poor working performance will be determined to exist if any of the contractors' workers fail to install work within the time allocated to do so. In certain work, particularly emergency work, the contractor will be expected to perform the work as expeditiously as possible, with a crew size to ensure each worker has tasks to perform and with as little lost time as allowed by conditions.

Claims of defective materials, inadequate workmanship or poor working performance will be first made to the contractor's job site foreman. In the event the situation cannot be remedied at the job site, a written claim will be made to the contractor's home office.

Contractor shall resolve all claims against workmanship or work performance by issuing a credit to the University for the Work performed. The amount of the credit will be determined in negotiation between the contractor and the University. Payments otherwise due may be withheld, in whole or in part, by the University on account of defective materials and/or unresolved workmanship issues.

Contractor shall employ only competent, careful and orderly employees. If the University determines that an employee is detrimental to the performance of the work, not qualified to perform the assigned work or guilty of improper conduct, the University may require removal of such employee.

The performance of services by the contractor shall not relieve the contractor from any obligation to correct any incomplete, inaccurate, or defective work at no further cost to the University, when such inaccuracies are due to the acts or omissions, negligent or otherwise, of the contractor.

The qualified Vendor shall have the required certifications in elevator maintenance, have maintained comparable or more complex elevator equipment and have multiple current maintenance service contracts on similar or more complex elevator equipment. The Vendor must have a local elevator service office and demonstrate the ability to have a qualified, certified representative on site for an overtime service call within one (1) hour from receiving a call. In addition, all personnel employed by the vendor for elevator work at the University shall hold current certifications as specified in the field of elevator maintenance service.

## LIFE OF CONTRACT PAGE

**LIFE OF CONTRACT:** The initial contract term is six months effective September 1, 2016 to February 28, 2017

Upon mutual agreement, this contract becomes effective on March 1, 2017 and extends for a period of **one (1) year** or until such reasonable time thereafter as is necessary to obtain a new contract. Such "reasonable time" shall not exceed twelve (**12**) months upon expiration of one (**1**) year from the effective date of this contract by giving the Director of Purchasing thirty (**30**) days written notice.

**RENEWAL:** This contract may be renewed upon mutual written consent, submitted to the Director of Purchasing thirty (30) days prior to the date of expiration. Such renewal shall be in accordance with the terms and conditions of the original contract and shall be limited to four (4) successive one (1) year periods.

**CANCELLATION:** The Director of Purchasing reserves the right to cancel this contract immediately upon written notice to the vendor if the commodities or services supplied are of an inferior quality or do not conform to the specifications of the bid and contract herein.

**OPEN MARKET CLAUSE:** The Director of Purchasing may authorize a spending unit to purchase in the open market, without the filing of a requisition or cost estimate, items specified on this contract for immediate delivery in emergencies due to unforeseen causes (including but not limited to delays in transportation or an unanticipated increase in the volume of work).

**TIME:** Time consumed in delivery or performance is of the essence.

**ORDERING PROCEDURE:** Departments shall submit a requisition for commodities covered by this contract to the Purchasing office. Purchasing will then issue a purchase order to the vendor as authorization for shipment. If the vendor accepts credit cards, purchases may also be made using the P-card up to the established transaction limit for the department.

**FUNDING PARAGRAPH:** Service performed under this contract is to be continued in the succeeding fiscal year contingent upon funds being appropriated by the Legislature for this service. In the event funds are not appropriated for these services, this contract becomes of no effect and is null and void after June 30.

**INTEREST:** Should this contract include a provision for interest on late payments, the agency agrees to pay the maximum legal rate under West Virginia Law. All other references to interest charges are deleted.

**CONTRACT PRICING:** Unless otherwise allowed by the Director of Purchasing, price increases will be approved only at the beginning of each renewal period. All adjustments will be made in dollars, not per cent. Requests for price increases must be received in writing by the Director at least thirty (**30**) days in advance of the effective date. Vendors may add products throughout the term of this contract when it is in the best interest of the University.

The Director at Marshall University will determine which products will be added. Price decreases will be "passed through" to Marshall University.

This contract is for mandatory use at Marshall University and is available on an optional basis for use by all other higher education institutions in West Virginia, including WVNET and the higher education central office.