

FM8 PROTECTIVE MAINTENANCE

**AQUAVISTA OF PANAMA CITY BEACH
C/O FIRST SERVICE RESIDENTIAL
P.O. BOX 34769
CHARLOTTE, NC 28234**
(Hereinafter called Customer, you).

Bagby Elevator Company, Inc. (hereinafter called the Company, Bagby, we) proposes to furnish on a regular and systematically scheduled basis, full maintenance service of the following equipment:

TWO (2) TRACTION PASSENGER ELEVATORS: 8 STOP KONE MRLS

Located at: **17155 Front Beach Road ◊ Panama City, FL 32413**

The protective maintenance service provided and the terms and conditions associated with this service are as follows:

- Under this Contract, Bagby's trained personnel will maintain the elevator equipment as hereinafter described, on the terms and conditions subsequently set forth.
- Bagby will regularly and systematically adjust, clean, lubricate, furnish lubricants and hydraulic oil, and when conditions warrant, repair or replace:

MACHINE, MOTOR, GENERATOR AND CONTROLLER PARTS

including

Worms, Gears, Thrusts, Bearings, Brake Magnet Coils, Brake shoes, Brushes, Windings, Commutators, Rotating Elements, Coils, Contacts, Resistors, Magnet Frames, Valves, Pistons, Piston Packing, Pump and other mechanical parts, Hall and Car Button Stations, Hall Lanterns, Position Indicators, Car and Hall Register Lights, Door Guides, Door Hangers, Door Interlocks and Door Operating Equipment.

- Bagby will keep the Guide Rails properly lubricated at all times except where roller guides are used, and when necessary, renew guide shoe gibs or guide rollers in order to assure smooth and quiet operation.
- Bagby will periodically examine all safety devices and governors, and equalize the tension on all hoisting ropes.
- Bagby will renew all wire ropes as often as necessary to maintain an adequate factor of safety, and repair and/or replace conductor cables.
- Bagby will also examine, lubricate, adjust, repair and/or replace the following accessory equipment:
- Bagby will correct any failures which take any Unit out of service as soon as is practicable. However, in the event a Unit is out of service for more than two (2) regular Company workdays from the day we receive notification of the failure, the Customer may request that Bagby credit the Customer in the following month, the amount of the monthly maintenance payment allocable to the Unit, prorated for the period the Unit was out of service beyond such time. The receipt of credits as set forth hereinabove will be Customer's exclusive remedy in the event of a failure taking a Unit out of Service for more than two (2) regular Bagby working days. This provision shall not apply to pre-scheduled repairs, or repairs delayed for any cause excused elsewhere in the Contract.
- The following items of elevator equipment are not included in this contract:
Machine, cab, car doors, car flooring, car lights, emergency lighting, telephones and all related equipment, door frame, sills and hatch doors, A.C. service feeders and disconnect switches, fuses, intercoms, underground or unexposed jack assembly and underground, embedded, or unexposed piping, heat sensors, flex hoses, air conditioning units or any parts and components for same smoke sensors or safety signaling equipment or other instructions or warnings in connection with use by passengers (if applicable), or air conditioning units mounted on or about controllers including the parts and components for same.
- It is mutually agreed that Bagby shall not be under any obligation hereunder to make any renewals, repairs or replacements except those incidental to the normal wear and tear of the elevator equipment and that Bagby is not required under this contract to make renewals, repairs or replacements arising from or involving environmental conditions, power surges, water damage, fire, vandalism, negligence (other than that of Bagby), load tests, obsolescence, accident or misuse of machinery

or car, work by others, or other similar or dissimilar causes beyond Bagby's control. Bagby shall not be required to make safety tests, nor to install new attachments on the elevator equipment whether or not recommended or directed by Insurance Companies, or Government, State, Municipal, or other authorities, nor to make any replacements with parts of a different design. If Customer requests and receives services for "non-covered" elevator equipment or work excluded under the Contract, Customer will compensate Bagby at the applicable regular or overtime rate for such work.

- For the customer's elevator equipment, Company will perform an annual no load safety test and once every five years a full load test on any traction elevator (if applicable). Damage to the equipment from the load test is not ordinary wear and tear. Damage, renewals, repairs or replacements resulting or necessitated by same are not covered by Company under this contract.
- The Customer agrees to supply the company with all electrical drawings and wiring schematics, documentation or proprietary equipment relating to the equipment covered by this contract including any maintenance control programs ("MCP").
- Services under this contract shall be performed during regular working hours on regular working days except as follows:

Emergency call back service between regular inspections during regular working hours of the elevator trade is provided in this contract.

- If overtime work not included in this contract is requested by Customer covering examinations, repairs, or emergency minor callback services, or if Customer requests that services under this contract be performed at other than regular working hours on regular working days, the Company will absorb the regular time portion of each overtime hour worked (at Bagby's standard billing rates). Travel time in addition to hours on the job will be billable to Customer at these rates. Customer shall pay only the double-time portion of each hour worked at the appropriate overtime billing rate. Hourly labor rates for overtime or regular time are available upon request. The foregoing credit for the regular time portion of work is inapplicable where the work arises from environmental conditions, power surges, water damage, fire, vandalism, negligence, load tests, obsolescence, accident or misuse of machinery or car, work by others, or other similar or dissimilar causes beyond Bagby's control.

- Services will be furnished hereunder for a period of ^{one (1) year} ~~five (5) year(s)~~, beginning _____ (the "Commencement Date"), at the price herein named, and will continue until terminated as provided herein. This agreement shall automatically renew for additional periods of ^{one (1) year} ~~five (5) year(s)~~ each, unless either party provides prior written notice to the other party of its intent to terminate the agreement at the end of the original ^{one (1) year} ~~five (5) year~~ period, or at the end of any subsequent ^{one (1) year} ~~five (5) year~~ period, said written notice via certified mail must be received by the other party no later than ninety days prior to the end of the then current ^{one (1) year} ~~five (5) year~~ period.

- For the service provided hereunder, Customer shall pay to the Company the sum of ^{\$1000.00} ~~One Thousand Two Hundred & 00/100 dollars, (\$1,200.00)~~, per month payable upon presentation of invoice. Customer shall pay an addition to the price herein quoted amount of any tax based on sales made hereunder, imposed by any law enacted after the date of this proposal. The foregoing price shall be adjusted in the following manner as of the anniversary of the commencement date ("Adjustment Date"):

(1) 25% of the contract price shall be increased or decreased by the percentage of increase or decrease shown by the index of "Wholesale Commodity Prices for Metals and Metal Products" published by the U.S. Department of Labor, Bureau of Statistics, published as of the month within which the yearly adjustment date falls, as compared with the rate on the Commencement Date.

(2) 75% of the contract price shall be increased or decreased by the percentage of increase or decrease in the straight time hourly rate for elevator examiners, in the locality where the equipment is to be maintained on the yearly adjustment date as compared with the rate on the Commencement Date.

For the purpose of this contract and subsequent adjustments, the straight time hourly rate for elevator examiners shall equal actual hourly rate paid to the elevator examiners plus fringe benefits granted in lieu of, or in addition to, hourly rate increases. Fringe benefits include, but are not limited to, pensions, vacations, paid holidays, group life insurance, hospitalization insurance, F.I.C.A., S.U.I. and Worker's Compensation.

(3) The adjustment in price resulting from the above price adjustment provisions shall not increase the contract price to more than the maximum price permitted by any applicable, legally issued government regulation in force on the date that the adjustment becomes effective. In the event retroactive pay or fringe increases are incurred, the contract price will be prorated without regard to the yearly adjustment date.

- Payments in the frequency and amount set forth above are due on or before the last day of the month prior to the billing period, beginning on the Commencement Date.

Payment will be made via check. Where applicable, to enable Bagby to process direct debit payments, Customer agrees to provide a copy of a voided check from Customer's business bank account.

The work shall be performed for the agreed price plus any applicable sales, excise or similar taxes as required by law.

In addition to the agreed price, Customer shall pay to Bagby any future applicable tax imposed on Bagby, Bagby's suppliers or Customer in performance of the work described.

Customer agrees to pay a late charge from the date such sums becomes due of one and one-half percent (1.5%) per month, or the highest amount allowed by law in the locality where the equipment is located, whichever is less, on any balance past due for more than thirty (30) days, together with all costs of collection, (including, but not limited to Attorney's Fees, Court Costs, Filing Fees) incurred by Bagby to collect overdue amounts. Bagby reserves the right to discontinue this service at any time, without notice, in the event that payments have not been made when due. Where applicable, the Customer does further waive any constitutional, statutory, or common law property exemptions.

- If the Customer breaches a term of this agreement resulting in the discontinuance of the agreement by Bagby before the end of the stated term or if Customer fails to honor this agreement for the stated term, Customer agrees to pay Company liquidated damages equal in amount to eighty (80%) percent of the Monthly Agreement Price without regard to future annual adjustments as hereinabove provided, times the number of months remaining for the unexpired term of the Contract. It is agreed that the liquidated damages herein provided is a reasonable estimate of the damages to be sustained by Company for the failure of the Customer to honor the terms of this agreement for the term stated.
- The Customer does hereby consent to having this agreement construed under and in accordance with the laws of the State of Florida and to the venue and jurisdiction of any proceeding or lawsuit under this agreement to be in the State Courts in the County where the equipment is located. In states requiring notice prior to filing a lien, this notice requirement is hereby complied with.
- The Customer shall at all times and at its own cost, maintain comprehensive bodily injury and property damage insurance, including bodily injury and property damage caused by the ownership, use or operation of the equipment described herein.
- The Customer shall not permit persons or firms other than Company to make alterations, additions, adjustments, repairs, or replacements to the equipment covered by this contract. This is a material term of this contract.
- **INDEMNITY:** In consideration of the above described services at the above named price, customer shall protect, defend, exonerate, indemnify and hold harmless Bagby, and its directors, officers, agents, employees and assigns from and against all claims or actions, and all expenses incidental to the defense of any such claims or actions, based upon or arising out of damage or injury (including death) to persons or property caused by, related to, or sustained in connection with the work performed under this contract or the vertical equipment covered under this contract. Customer agrees to provide company with competent counsel of company's own choosing. The foregoing indemnification and hold harmless agreement shall apply regardless of the actual or alleged sole, joint or contributory negligence on the part of an indemnified party. Customer shall not be required to indemnify Company for its sole gross negligence. The obligations under this paragraph shall survive the earlier termination of this agreement.
- Customer agrees that if any unit is malfunctioning or is in a dangerous condition, then Customer will immediately notify Bagby by using the 24 hour service line. Until the problem is corrected, Customer agrees to remove the unit from service and to take all necessary precautions to prevent access or use of the unit while it is malfunctioning or in a dangerous condition.
- It is agreed that Bagby does not assume possession or control of any part of the Units, that such remains the Customer's solely as owner, lessee, or agent of the owner or lessee, and that the Customer is solely responsible for all requirements imposed by any federal, state or local law, ordinance or regulation. The Customer agrees to give the Company ready access to all areas of the building in which any part of the Units are located and to keep all machine rooms and pit areas free from water, stored materials and excessive debris. The Customer agrees to provide a safe workplace for Company and to remove any waste or hazardous materials in accordance with applicable laws and regulations. The Customer agrees to maintain a maximum temperature of 85 degrees Fahrenheit in the elevator equipment room on all microprocessor controlled elevators.
- Customer agrees to properly post, maintain, and preserve any and all instructions or warnings to passenger in connection with the use of these units.
- Those elevators described in this contract provided with fire fighter service are required by law to be subjected to a test of the special emergency service and a written record kept of the findings. The Customer agrees to be responsible for performing, and keeping a record of, the monthly test of the fire fighter service as required by applicable code.
- If any part delivered hereunder incorporates computer software, the Customer agrees that the transaction is not a sale of such software but merely a license to use such software solely for operating the Unit(s) for which such part was provided. Accepting delivery of such part, the Customer agrees not to copy or let others copy such software for any purpose whatsoever, to keep such software in confidence as a trade secret, and not to transfer possession of such part to others except as a part of a transfer of ownership of the Units(s) in which such part is installed, provided that the Customer informs Bagby of such transfer and the transferee agrees to abide by the above license terms.
- Bagby shall not be held responsible or liable for any loss, damage, detention, or delay caused by accidents, labor troubles, strikes, lockouts, fire, flood, acts of civil or military authorities, or by insurrection or riot, or by any other cause which is

unavoidable or beyond its control, or in any event for consequential damages. No work, service or liability on the part of the Company, other than that specifically mentioned herein, is included or intended.

- The Customer understands that Bagby will supply personnel, material, and resources to Customer, the costs of which must be prorated over the course of the contract term. For that reason, in the event of the sale, lease, or other transfer of the ownership of the equipment described herein, or the premises in which it is located, Customer agrees to see that such purchaser is made aware of this Agreement and assumes and agrees to be bound by the terms of the Agreement.
- The Customer hereby appoints the Company as special agent, authorized to act for the Customer in matters concerning elevator maintenance and repair. Specifically, Bagby is authorized to act as a special agent on the Customer's behalf when purchasing parts necessary to honor the maintenance contract. The Customer authorizes Bagby, as special agent for the Customer, to execute, at Bagby's expense, any legal action required to obtain the necessary parts. This contract creates a principal/agent relationship. It is not intended to constitute an employee/independent contractor relationship. The Customer shall retain control of the manner in which the Company may represent the Customer as its agent. Bagby's term as agent is for the duration of the maintenance contract.
- This contract shall constitute the entire agreement with respect to elevator service to be rendered by Bagby to Customer. No agent or employee shall have the authority to waive any clause of this contract. In the event the Customer's acceptance is in the form of a Purchase Order or other kind of document, the provisions, terms, and conditions of this Preventive Maintenance Agreement shall govern in the event of Conflict.
- This proposal does not constitute a contract or supersede the terms of any prior agreement until a copy is executed by both parties is returned to the Company and approved by an Executive Officer of Bagby Elevator Company, Inc. All prior representations or agreements, whether written or verbal, not incorporated herein are superseded, and no changes in or additions to this agreement will be recognized unless made in writing and signed by both the Customer and an Executive Officer of Bagby Elevator Company, Inc. Further, any manual changes to this form will not be effective as to Bagby unless initialed in the margin by an Executive Officer of Bagby Elevator Company, Inc.
- These elevators have controller and machine parts that are proprietary. Under this contract Bagby will absorb the cost of all controller parts \$500.00 and under. If a part goes over that amount the cost of the part is to be split 50/50 between customer and company.
- The customer will have to be sure a complete set of wiring diagrams, keys, tools and manuals are supplied.
- Once East elevator is modernized with MCE controller, billing will be reduced from \$1200 per month to \$1000 per month. Once West elevator is modernized with MCE controller, billing will be reduced from \$1000 per month to \$800 per month.

BAGBY ELEVATOR COMPANY, INC.

BY: Kristy Eubanks
KRISTY EUBANKS, SALES REPRESENTATIVE

AQUAVISTA OF PANAMA CITY BEACH
◇ CHARLOTTE, NC 28234

BY: John M. Parker
(Signature)

John M. Parker
(name-typed or printed)

TITLE: Board V.P.

The foregoing proposal is hereby accepted at the prices and upon the terms and conditions therein stated,

this _____ day of _____, _____.

The proposal and contract is hereby accepted by Bagby Elevator Company, Inc.:

BY: _____
Hunter M. Bagby, Executive Vice President

DATE: _____