

AGREEMENT FOR PROFESSIONAL SERVICES

THIS AGREEMENT is made and entered into this 31st day of AUGUST, 2020, by and between the City of Merced, a California Charter Municipal Corporation, whose address of record is 678 West 18th Street, Merced, California 95340, (hereinafter referred to as "City") and ThyssenKrupp Elevator Corporation, a Delaware Corporation, whose address of record is 940 Riverside Parkway, Suite 20, West Sacramento, California 95605 (hereinafter referred to as "Consultant").

WHEREAS, City is in need of elevator maintenance services; and,

WHEREAS, Consultant represents that it possesses the professional skills to provide elevator maintenance services.

NOW, THEREFORE, the parties hereto, in consideration of the mutual covenants hereinafter recited, hereby agree as follows:

1. **SCOPE OF SERVICES.** The Consultant shall furnish the following services: Consultant shall provide the elevator maintenance services described in Exhibit "A" attached hereto.

No additional services shall be performed by Consultant unless approved in advance in writing by the City, stating the dollar value of the services, the method of payment, and any adjustment in contract time. All such services are to be coordinated with City and the results of the work shall be monitored by the Director of Public Works or designee. However, the means by which the work is accomplished shall be the sole responsibility of the Consultant.

2. **TIME OF PERFORMANCE.** All of the work outlined in the Scope of Services shall be completed in accordance with the Schedule outlined in Exhibit "A" attached hereto and incorporated herein by reference. By mutual agreement and written addendum to this Agreement, the City and the Consultant may change the requirements in said Schedule.

3. **TERM OF AGREEMENT.** The term of this Agreement shall commence on July 1, 2020 and end on June 30, 2022. Upon expiration of this Agreement, and upon approval by City, Consultant shall have the option to renew this Agreement for an additional maximum period of three (3) years ending as of June 30, 2025.

4. **COMPENSATION.** Payment by the City to the Consultant for actual services rendered under this Agreement shall be made upon presentation of an invoice detailing services performed under the Scope of Services, in accordance with the fee schedule set forth in Exhibit "B" attached hereto and incorporated herein by reference. The Consultant agrees to provide all services required under the Scope of Services in Exhibit "A" within the compensation amount set forth in Exhibit "B". For Consultant's services rendered under this Agreement, City shall pay Consultant the not to exceed sum of One Thousand Four Hundred Dollars (\$1,400.00) per month (\$200.00 per hydraulic elevator per month) for a total not to exceed sum of Sixteen Thousand Eight Hundred Dollars (\$16,800.00) per year.

5. **METHOD OF PAYMENT.** Compensation to Consultant shall be paid by the City after submission by Consultant of an invoice delineating the services performed.

6. **RECORDS.** It is understood and agreed that all plans, studies, specifications, data magnetically or otherwise recorded on computer or computer diskettes, records, files, reports, etc., in possession of the Consultant relating to the matters covered by this Agreement shall be the property of the City, and Consultant hereby agrees to deliver the same to the City upon termination of the Agreement. It is understood and agreed that the documents and other materials including but not limited to those set forth hereinabove, prepared pursuant to this Agreement are prepared specifically for the City and are not necessarily suitable for any future or other use.

7. **CONSULTANT'S BOOKS AND RECORDS.** Consultant shall maintain any and all ledgers, books of account, invoices, vouchers, canceled checks, and other records or documents evidencing or relating to charges for services or expenditures and disbursements charged to the City for a minimum of three (3) years, or for any longer period required by law, from the date of final payment to the Consultant to this Agreement. Any records or documents required to be maintained shall be made available for inspection, audit and/or copying at any time during regular business hours, upon oral or written request of the City.

8. **INDEPENDENT CONTRACTOR.** It is expressly understood that Consultant is an independent contractor and that its employees shall not be employees of or have any contractual relationship with the City. Consultant shall be responsible for the payment of all taxes, workers' compensation insurance and unemployment insurance. Should Consultant desire any insurance protection, the Consultant is to acquire same at its expense.

In the event Consultant or any employee, agent, or subcontractor of Consultant providing services under this Agreement is determined by a court of competent jurisdiction or the California Public Employees Retirement System (PERS) to be eligible for enrollment in PERS as an employee of the City, Consultant shall indemnify, protect, defend, and hold harmless the City for the payment of any employee and/or employer contributions for PERS benefits on behalf of Consultant or its employees, agents, or subcontractors, as well as for the payment of any penalties and interest on such contributions, which would otherwise be the responsibility of City.

9. INDEMNITY. Consultant shall indemnify, protect, defend (with legal counsel selected by the City), save and hold City, its officers, employees, and agents, harmless from any and all claims or causes of action for death or injury to persons, or damage to property resulting from intentional or negligent acts, errors, or omissions of Consultant or Consultant's officers, employees, volunteers, and agents during performance of this Agreement, or from any violation of any federal, state, or municipal law or ordinance, to the extent caused, in whole or in part, by the willful misconduct, negligent acts, or omissions of Consultant or its employees, subcontractors, or agents, or by the quality or character of Consultant's work, or resulting from the negligence of the City, its officers, employees, volunteers and agents, except for loss caused by the sole negligence or willful misconduct of the City or its officers, employees, volunteers or agents. It is understood that the duty of Consultant to indemnify and hold harmless includes the duty to defend as set forth in Section 2778 of the California Civil Code. Acceptance by City of insurance certificates and endorsements required under this Agreement does not relieve Consultant from liability under this indemnification and hold harmless clause. This indemnification and hold harmless clause shall survive the termination of this Agreement and shall apply to any damages or claims for damages whether or not such insurance policies shall have been determined to apply. By execution of this Agreement, Consultant acknowledges and agrees to the provisions of this Section and that it is a material element of consideration.

10. INSURANCE. During the term of this Agreement, Consultant shall maintain in full force and effect at its own cost and expense, the following insurance coverage:

a. Workers' Compensation Insurance. Full workers' compensation insurance shall be provided with a limit of at least One Hundred Thousand Dollars (\$100,000) for any one person and as required by law, including Employer's Liability limits of \$1,000,000.00 per accident. The policy shall be endorsed to waive the insurer's subrogation rights against the City.

b. General Liability.

- (i) Consultant shall obtain and keep in full force and effect general liability coverage at least as broad as ISO commercial general liability coverage occurrence Form CG 0001.
- (ii) Consultant shall maintain limits of no less than One Million Dollars (\$1,000,000) per occurrence for bodily injury, personal injury and property damage.
- (iii) The City, its officers, employees, volunteers and agents are to be named as additional insureds under the policy, as respects liability arising out of work or operations performed by or on behalf of the Consultant.
- (iv) The policy shall stipulate that this insurance will operate as primary insurance for work performed by Consultant and its sub-contractors, and that any other insurance or self insurance maintained by City or other named insureds shall be excess and non-contributory.
- (v) Consultant shall maintain its commercial general liability coverage for three (3) years after completion of the work and shall add an additional insured endorsement form acceptable to the City naming the City of Merced, its officers, employees, agents and volunteers for each year thereafter for at least three (3) years after completion of the work. Copies of the annual renewal and additional insured endorsement form shall be sent to the City within thirty (30) days of the annual renewal.

c. Automobile Insurance.

- (i) Consultant shall obtain and keep in full force and effect an automobile policy of at least One Million Dollars (\$1,000,000) per accident for bodily injury and property damage.
- (ii) The City, its officers, employees, volunteers and agents are to be named as additional insureds under the policy, as respects automobiles owned, leased, hired or borrowed by the Consultant.

- (iii) The policy shall stipulate that this insurance will operate as primary insurance for work performed by Consultant and its sub-contractors, and that any other insurance or self insurance maintained by City or other named insureds shall be excess and non-contributory.

d. Professional Liability Insurance. Consultant shall carry professional liability insurance appropriate to Consultant's profession in the minimum amount of One Million Dollars (\$1,000,000). Architects and engineers' coverage is to be endorsed to include contractual liability.

e. Qualifications of Insurer. The insurance shall be provided by an acceptable insurance provider, as determined by City, which satisfies all of the following minimum requirements:

- (i) An insurance carrier admitted to do business in California and maintaining an agent for service of process within this State; and,
- (ii) An insurance carrier with a current A.M. Best Rating of A:VII or better (except for workers' compensation provided through the California State Compensation Fund).

f. Certificate of Insurance. Consultant shall complete and file with the City prior to engaging in any operation or activity set forth in this Agreement, certificates of insurance evidencing coverage as set forth above and which shall provide that no cancellation or expiration by the insurance company will be made during the term of this Agreement, without thirty (30) days written notice to City prior to the effective date of such cancellation—including cancellation for nonpayment of premium.

g. Notwithstanding any language in this Agreement to the contrary, Consultant shall be entitled to be paid pursuant to the terms of this Agreement until Consultant has obtained the insurance required by this Section 10 and provided documentation of said insurance to the City. In addition to any other remedies City may have, City reserves the right to withhold payment if Consultant's insurance policies are not current.

11. ASSIGNABILITY OF AGREEMENT. It is understood and agreed that this Agreement contemplates personal performance by the Consultant and is

based upon a determination of its unique personal competence and experience and upon its specialized personal knowledge. Assignments of any or all rights, duties or obligations of the Consultant under this Agreement will be permitted only with the express written consent of the City.

12. **TERMINATION FOR CONVENIENCE OF CITY.** The City may terminate this Agreement any time by mailing a notice in writing to Consultant that the Agreement is terminated. Said Agreement shall then be deemed terminated, and no further work shall be performed by Consultant. If the Agreement is so terminated, the Consultant shall be paid for that percentage of the phase of work actually completed, based on a pro rata portion of the compensation for said phase satisfactorily completed at the time the notice of termination is received.

13. **CONFORMANCE TO APPLICABLE LAWS.** Consultant shall comply with its standard of care regarding all applicable Federal, State, and municipal laws, rules and ordinances. No discrimination shall be made by Consultant in the employment of persons to work under this contract because of race, color, national origin, ancestry, disability, sex or religion of such person.

Consultant hereby promises and agrees to comply with all of the provisions of the Federal Immigration and Nationality Act (8 U.S.C.A. 1101 *et seq.*), as amended; and in connection therewith, shall not employ unauthorized aliens as defined therein. Should Consultant so employ such unauthorized aliens for the performance of work and/or services covered by this Agreement, and should any agency or instrumentality of the federal or state government, including the courts, impose sanctions against the City for such use of unauthorized aliens, Consultant hereby agrees to, and shall, reimburse City for the cost of all such sanctions imposed, together with any and all costs, including attorneys' fees, incurred by the City in connection therewith.

14. **WAIVER.** In the event that either City or Consultant shall at any time or times waive any breach of this Agreement by the other, such waiver shall not constitute a waiver of any other or succeeding breach of this Agreement, whether of the same or any other covenant, condition or obligation. Waiver shall not be deemed effective until and unless signed by the waiving party.

15. **INCONSISTENT OR CONFLICTING TERMS IN AGREEMENT AND EXHIBITS.** In the event of any contradiction or inconsistency between any attached document(s) or exhibit(s) incorporated by reference herein and the provisions of the Agreement itself, the terms of the Agreement shall control.

Any exhibit that is attached and incorporated by reference shall be limited to the purposes for which it is attached, as specified in this Agreement. Any contractual terms or conditions contained in such exhibit imposing additional obligations on the City are not binding upon the City unless specifically agreed to in writing, and initialed by the authorized City representative, as to each additional contractual term or condition.

16. **AMBIGUITIES.** This Agreement has been negotiated at arms' length between persons knowledgeable in the matters dealt with herein. Accordingly, any rule of law, including, but not limited to, Section 1654 of the Civil Code of California, or any other statutes, legal decisions, or common-law principles of similar effect, that would require interpretation of any ambiguities in this Agreement against the party that drafted this Agreement is of no application and is hereby expressly waived.

17. **VENUE.** This Agreement and all matters relating to it shall be governed by the laws of the State of California and any action brought relating to this agreement shall be held exclusively in a state court in the County of Merced.

18. **AMENDMENT.** This Agreement shall not be amended, modified, or otherwise changed unless in writing and signed by both parties hereto.

19. **INTEGRATION.** This Agreement constitutes the entire understanding and agreement of the parties and supersedes all previous and/or contemporaneous understanding or agreement between the parties with respect to all or any part of the subject matter hereof.

20. **AUTHORITY TO EXECUTE.** The person or persons executing this Agreement on behalf of the parties hereto warrants and represents that he/she/they has/have the authority to execute this Agreement on behalf of their entity and has/have the authority to bind their party to the performance of its obligations hereunder.

21. **COUNTERPARTS.** This Agreement may be executed in one or more counterparts with each counterpart being deemed an original. No counterpart shall be deemed to be an original or presumed delivered unless and until the counterparts executed by the other parties hereto are in the physical possession of the party or parties seeking enforcement thereof.

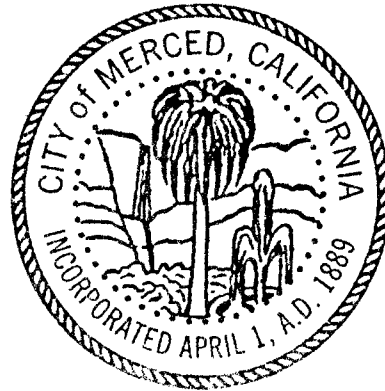
IN WITNESS WHEREOF, the parties have caused this Agreement to be executed on the date first above written.

CITY OF MERCED
A California Charter Municipal
Corporation

BY: Stephanie Dutz
City Manager

ATTEST:
STEVE CARRIGAN, CITY CLERK

BY: Jennifer L. Carrigan
Assistant/Deputy City Clerk



APPROVED AS TO FORM:

BY: Jim B. Arbut 7-14-20
City Attorney Date

301325 PO# 139494
ACCOUNT DATA:

BY: [Signature]
Verified by Finance Officer v-10991
Funds available. 8/27/20
071-119-532-25-00
\$16,800.00/year

CONSULTANT
THYSSENKRUPP ELEVATOR
CORPORATION,
A Delaware Corporation

BY: 
(Signature)

Rachel Jones
(Typed Name)

Its: Branch Manager
(Title)

BY: _____
(Signature)

(Typed Name)

Its: _____
(Title)

Taxpayer I.D. No. 1211267

ADDRESS: 940 Riverside Parkway
Suite 20
West Sacramento, CA
95605

TELEPHONE: 916-417-6237

FAX: 866-571-2888

E-MAIL: sacramento@thyssenkrupp.com

Elevator Maintenance Service

SCOPE OF SERVICES

The City of Merced hereby requests proposals to service all City owned elevators listed herewith.

Make	Model	Passenger (Hydraulic)	Site	Address	State ID
A & B Elevator	Relay Logic	1	Police Department	611 22 nd Street	069525
US Elevator	Relay Logic	1	Merced Civic Center	678 18 th Street	085780
US Elevator	Relay Logic	1	Merced Civic Center	678 18 th Street	085781
Westinghouse	Relay Logic	1	Parcade	638 18 th Street	105181
Westinghouse	Relay Logic	1	Parcade	638 18 th Street	105182
Schindler	Microprocessor	1	Merced Center Parking	1801 M Street W	149297
Schindler	Microprocessor	1	Merced Center Parking	1801 M Street W	149298

The following items represent the basic scope of service to be rendered:

CLEAN (remove dirt, lint, excess oil and grease):

- Power units
- Control Equipment (relay panels, selectors, operating switches, etc.)
- Pit Equipment (remove normal accumulation of rubbish)
- Guide Rails and Brackets (brush to remove lint and dust)
- Car Frames (guide shoes, safety parts, etc.)
- Top of Cars and Bottom of Platforms
- Car Door and Gate Openers
- Hoist way Door Equipment

LUBRICATE:

Oil and grease as required, according to manufacturers lubrication schedules. Provide proper lubrication to all items of elevator equipment at intervals recommended by the manufacturer and/or as a result of visual examinations.

- Power Unit (refill tank when necessary-flush and filter)
- Control Equipment (selectors, operation switches and devices, etc.)
- Guide Rails (refill lubricators as often as required)

EXAMINE:

Provide a thorough visual examination of all exposed parts accessible without dismantling components. Examinations are to be performed on a regular scheduled basis at intervals to be established based on use and need. Examinations to be performed by a State of California Certified Competent Conveyance Mechanic.

ADJUST:

Provide all necessary adjustments during regular scheduled examination visits.

EXHIBIT A

Elevator Maintenance Service

REPAIR:

During regular working hours provide necessary major and minor repairs, including labor and parts as required, to the following items:

- Control Equipment (relay panels, selectors, operating switches, etc.)
- Car Door and Gate Operators
- Hoist way Door Equipment
- Interlocks
- Leveling Switches (car and hoist way switches and cams)
- Guide Shoes (car roller guides, shoes, gibs, etc.)
- Pit Equipment
- Hydraulic Valves, Pumps, Pump Motors (Power Unit)
- "V" Belt on Power Unit
- Door Motors
- Guide Bearings, Packing and Packing Gland (Hydraulic Seals)

CALLBACK SERVICE:

Provide minor emergency callback service during regular time hours at no additional charge to the customer.

Overtime shall consist of weekdays 5pm to 8am, and Saturdays. (Hours as recognized by the International Union of Elevator Constructors.)

Double-time shall consist of Sundays and Holidays. (Hours as recognized by the International Union of Elevator Constructors.)

Billing for overtime call backs shall be at the following rates:

Overtime \$ _____ per hour
Double-time \$ _____ per hour

Overtime and double-time shall have two hour minimum for call out.

ITEMS NOT COVERED:

Cosmetic, construction, or ancillary components of the elevator system, including the finishing, repairing, or replacement of the cab enclosure, ceiling frames, panels and/or fixtures, hoist way door panels, door frames, sills, car flooring, floor covering, lighting fixtures, ceiling light bulbs and tubes, main line power switches, breaker(s), feeders to controller, hydraulic elevator jack casing, buried piping, alignment of guide rails, smoke and fire sensors, communication devices, security systems, batteries for emergency lighting and lowering, air conditioners, heaters, ventilation fans and all other items as set forth and excluded in this agreement.

MAINTENANCE FREQUENCY:

No less than twelve (12) maintenance visits per year. Fire recall testing and State of California-required record-keeping shall be completed by elevator service provider.

Elevator Maintenance Service

RESPONSE TIME:

In the event of trapped passenger(s), elevator service provider shall provide a technician on-site in forty-five (45) minutes or less from the time of notification. In the event the elevator requires repair, but is unoccupied, then response time shall be within four (4) hours or less.

ON-LINE RECORD-KEEPING:

Elevator service provider shall provide Purchaser with on-line service records, inspection reports and preliminary orders.

TESTING:

Elevator service provider shall provide all required testing on all hydraulic elevators, as required by the State of California, at no additional charge. The testing shall be covered during business hours. The elevators shall individually be out of service during the testing.

Any additional billing as a result of vandalism, misuse/damage by others, work not covered under the terms of this order shall be approved in writing PRIOR to commencement of the work.

**Fee Proposal:
City of Merced**

Make	Model	Passenger (Hydraulic)	Site	Address	State ID	Pricing Per Month
A & B Elevator	Relay Logic	1	Police Department	611 22 nd Street	069525	\$200.00
US Elevator	Relay Logic	1	Merced Civic Center	678 18 th Street	085780	\$200.00
US Elevator	Relay Logic	1	Merced Civic Center	678 18 th Street	085781	\$200.00
Westinghouse	Relay Logic	1	Parcade	638 18 th Street	105181	\$200.00
Westinghouse	Relay Logic	1	Parcade	638 18 th Street	105182	\$200.00
Schindler	Microprocessor	1	Merced Center Parking	1801 M Street W	149297	\$200.00
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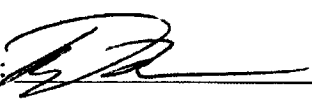
Billing for overtime call backs shall be at the following rates:

Overtime \$325.00 per hour

Double-time \$650.00 per hour

Name: Tracy Zenovic

Title: Sales Manager

Signature: 

Date: 7/13/2020