

**ADDENDUM NUMBER ONE
TO
NJPA MAINTENANCE AGREEMENT – CONTRACT #100516-TKE
FOR THE PROTECTION OF VERTICAL TRANSPORTATION EQUIPMENT**

This Addendum Number One to NJPA Maintenance Agreement – Contract #100516-TKE (“Addendum”), is made and entered into this 1st day of July, 2017, by and between the CITY OF COSTA MESA, a municipal corporation (“Purchaser”), and THYSSENKRUPP ELEVATOR CORPORATION, a Delaware corporation (“Service Provider”).

A. WHEREAS, Purchaser and Service Provider have entered into NJPA Maintenance Agreement—Contract #100516-TKE for the Protection of Vertical Transportation Equipment (“Agreement”); and

B. WHEREAS, Purchaser and Service Provider desire to amend certain terms of the Agreement as set forth herein.

NOW, THEREFORE, Purchaser and Service Provider agree as follows:

1. Section A of the Agreement shall be amended to delete the reference to “Contractor” and replace such term with “Service Provider.”

2. Section 2 (Governing Documents) of the Agreement is deemed deleted in its entirety and shall be replaced as follows:

The following documents form and are an integral part of this Agreement and are to be taken as mutually explanatory of one another. In the case of any ambiguity or discrepancy between the documents forming the Agreement, then the priority of the documents will be in the order listed below, unless otherwise agreed in writing between the parties:

- (a) This Agreement;
- (b) The location agreement set forth in Exhibit “A”, attached hereto and incorporated herein by this reference (“Location Agreement”);
- (c) Any other document mutually agreed and signed by the parties, forming part of this Agreement.

Purchaser and Service Provider agree that in the event of an inconsistency in this Agreement and any of the attached exhibits or any other documents forming part of this Agreement, the terms set forth in this Agreement shall prevail. To the extent this Agreement incorporates by reference any provision of any document, such provision shall be deemed a part of this Agreement. Nevertheless, if there is any conflict among the terms and conditions of this Agreement and those of any such provision or provisions incorporated by reference, this Agreement shall govern over the document referenced.

3. The first paragraph of Section 7 (Extent of Coverage) of the Agreement is deemed deleted in its entirety and shall be replaced as follows:

Service Provider will perform the following Services with respect to any equipment described on any Location Agreement:

4. The first paragraph of Section 11 (Term) of the Agreement is deemed deleted in its entirety and shall be replaced as follows:

Service under the terms and conditions of this Agreement shall be for an initial non-cancelable period of one (1) year commencing on the date first written above. Thereafter, the parties may renew this Agreement for four (4) additional one (1) year periods upon mutual written agreement of both parties.

5. The first paragraph of Section 14 (Insurance Requirements) of the Agreement is deemed deleted in its entirety and shall be replaced as follows:

At its sole expense, Service Provider shall carry and maintain throughout the term of this Agreement the insurance described below. The all risk and liabilities policies must each contain a provision by which the insurer agrees that such policy shall not be canceled except after thirty (30) days written notice to Purchaser. The general liability and automobile liability policies shall provide or be endorsed to provide that Purchaser and its elected and appointed boards, officers, officials, agents, employees, and volunteers are additional insureds on such policies. The additional insured coverage shall only apply to the extent any damages covered by the policy are determined to be caused by Service Provider's acts, actions, omissions or neglects, and not to the extent caused by the additional insured's own acts, actions, omissions, neglects or bare allegations.

6. Section 16 (Exclusivity) of the Agreement is deemed deleted in its entirety and shall be replaced as follows:

This Agreement is an exclusive frame agreement, which means that the Purchaser only undertakes to buy the Services, or parts thereof, from the Service Provider from the date that this Agreement is fully executed through termination of this Agreement.

7. Section 18.1 of the Agreement is deemed deleted in its entirety and shall be replaced as follows:

Either party may terminate this Agreement or any location agreement with 30 days' prior written notice in the event of the other party's failure to comply with the terms of this Agreement or any Location Agreement. Termination of any Location Agreement(s) shall not have an effect on other existing locations associated with this Agreement, which shall be completed in accordance with these terms and conditions. If such failure is remedied within the said 30 days period, this right to terminate shall expire.

8. Section 19 (Assignment) of the Agreement is deemed deleted in its entirety and shall be replaced as follows:

Purchaser may not assign, transfer, novate, sub-contract or otherwise dispose of any of its rights and obligations under this Agreement without the prior written consent of the Service Provider. Notwithstanding the above, Service Provider may, without the consent of the Purchase, use subcontractors for the performance of any Services purchased by the Purchaser under this Agreement of a local agreement. The use of subcontractors to provide Services shall in no way relieve the Service Provider of its responsibilities and obligations towards the Purchaser under this Agreement or a local agreement. Service Provider shall not assign, transfer, novate, or otherwise dispose of any of its rights and obligations under this Agreement without the prior written consent of the Purchaser.

9. Section 22.6 of the Agreement is deemed deleted in its entirety and shall be replaced as follows:

This Agreement and any applicable Location(s) Agreement shall be construed and enforced in accordance with the laws of the state where the equipment described on the applicable Location(s) Agreement is located. Purchaser further agrees to jurisdiction of the courts, both state and Federal, of the state in which the equipment set forth on the applicable Location(s) Agreement is located as to all matters and disputes arising out of that Location(s) Agreement.

10. Section 22.7 of the Agreement is deemed deleted in its entirety and shall be replaced as follows:

Service Provider agrees to defend, indemnify, hold free and harmless the Purchaser, its elected officials, officers, agents and employees, at Service Provider's sole expense, from and against any and all claims, actions, suits or other legal proceedings brought against the Purchaser, its elected officials, officers, agents and employees arising out of the performance of the Service Provider, its employees, and/or authorized subcontractors, of the work undertaken pursuant to this Agreement. The defense obligation provided for hereunder shall apply without any advance showing of negligence or wrongdoing by the Service Provider, its employees, and/or authorized subcontractors, but shall be required whenever any claim, action, complaint, or suit asserts as its basis the negligence, errors, omissions or misconduct of the Service Provider, its employees, and/or authorized subcontractors, and/or whenever any claim, action, complaint or suit asserts liability against the Purchaser, its elected officials, officers, agents and employees based upon the work performed by the Service Provider, its employees, and/or authorized subcontractors under this Agreement, whether or not the Service Provider, its employees, and/or authorized subcontractors are specifically named or otherwise asserted to be liable. Notwithstanding the foregoing, Service Provider shall not be liable for the defense or indemnification of the Purchaser for claims, actions, complaints or suits arising out of the negligence or willful misconduct of the Purchaser.

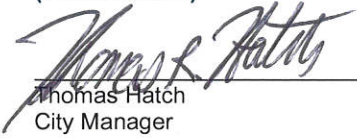
11. All terms not defined herein shall have the same meaning and use as set forth in the Agreement.

12. All other terms and conditions of the Agreement not in conflict with this Addendum shall remain in full force and effect.

[Signatures appear on following page.]

IN WITNESS WHEREOF, the parties hereto have caused this Addendum to be executed by and through their respective authorized officers, as of the date first above written.


**CITY OF COSTA MESA
(PURCHASER)**



Thomas Hatch
City Manager

Date: 7/12/17

**THYSSENKRUPP ELEVATOR CORPORATION
(SERVICE PROVIDER)**



Daniel Van Mil
Branch Account Executive

Date: 6/30/17



Mark Hintz
Vice President Contracts Department

Date: 6/29/17

ATTEST:




Brenda Green
City Clerk



Date: 7/13/17

APPROVED AS TO FORM:



Thomas Duarte
City Attorney

Date: 07/06/17

APPROVED AS TO INSURANCE:



Ruth Wang
Risk Management

Date: 7/5/17

DEPARTMENTAL APPROVAL:

For *Balraj*
Raja Sethuraman
Public Services Director

Date: 7-5-17

APPROVED AS TO PURCHASING:

Stephen Dunivent
Stephen Dunivent
Interim Finance Director *MP*

Date: 7-06-17