

NJPA Maintenance Agreement – Contract #100516-TKE for the Protection of Vertical Transportation Equipment

- A. THIS AGREEMENT (hereinafter "Agreement") made and entered into on this 1st day of July, 2017 by and between City of Costa Mesa, having an address of 77 Fair Drive Costa Mesa CA 92628-1200 (hereinafter referred to as "Purchaser"), and, ThyssenKrupp Elevator Corporation, a Delaware corporation, having an address of 114 Townpark Drive, Kennesaw, Georgia 30144 (hereinafter referred to as "Contractor"). In consideration of the mutual covenants contained herein, Contractor agrees to perform the services described herein and Purchaser or its members agree to pay the amounts described herein, all on the terms and conditions set forth in this Agreement.

WHEREAS,

- B. The Purchaser is engaged either as a real property owner or manager (or as a part in joint ventures or consortiums to that effect); and
- C. The Service Provider is engaged in the business of servicing and repairing elevators, escalators and other vertical transportation equipment.

NOW THEREFORE, the Parties hereto agree as follows:

1. BACKGROUND

The Purchaser and the Service Provider desire to enter into this Agreement as a long term commitment for the maintenance and repair of Purchaser's vertical transportation equipment as further described in this Agreement. Under the Agreement the Purchaser may issue written requests to the Service Provider to provide certain vertical transportation maintenance services at locations controlled by Purchaser. The Agreement is to provide an umbrella for those location-specific written requests for vertical transportation maintenance services issued by the Purchaser.

2. GOVERNING DOCUMENTS

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 as listed below, unless otherwise agreed in writing between the parties:

- (a) Each individual location requirement (as specified at the time of ordering by the Purchaser). A Location requirement shall be considered "Accepted" if it is fully executed by a duly authorized representative of both the Purchaser and the Service Provider and provided to the Service Provider;
- (b) This Agreement;
- (c) Any other document mutually agreed and signed by the parties, forming part of this Agreement.

3. PERFORMANCE

Service Provider will provide the services and/or scope of work applicable to all vertical transportation equipment described on any fully executed and properly delivered Agreement (the "equipment") on the terms and conditions set forth in this Agreement (the "Services"). The term "Property" hereinafter will refer to the real property of the Purchaser on which the equipment is located. Service Provider will use trained personnel directly employed and supervised by Service Provider or sub-contractors. They will be qualified to keep Purchaser's equipment properly adjusted, and they will use all reasonable care to maintain that equipment in proper operating condition. Service Provider will regularly and systematically examine, adjust and lubricate as required, and, in Service Provider's sole opinion, if conditions warrant, Service Provider will repair or replace all equipment parts and devices not specifically excluded by this Agreement.



thyssenkrupp

The Services shall be performed in a diligent and first class manner, with quality supplies, materials, equipment and workmanship and in such a manner so as to minimize the possibility of any annoyance, interference, or disruption to tenants or other occupants of the Property and their invitees. Upon completion of the Services, Service Provider shall restore the Property to its original condition and shall leave the Property clean and free of all tools, equipment, waste materials and rubbish.

Service Provider will service Purchaser's equipment and its component parts in their present condition with the understanding that Service Provider shall neither be required nor obligated to service, make renewals or repairs upon the equipment by reason of negligence, obsolescence, misuse of the equipment, loss of power, blown fuses, tripped stop switches, theft, vandalism, explosion, fire, power failure, water damage, storm, lightning, nuisance calls or by any other reason or any other cause beyond Service Provider's control, except ordinary wear and tear from the commencement date of this agreement. With the passage of time, equipment technology and designs will change. If any part or component of any equipment described in a NFA cannot, in Service Provider's sole opinion, be safely repaired and is no longer stocked and readily available from either the original equipment manufacturer or an aftermarket source, that part or component shall be considered obsolete. Purchaser will be responsible for all charges associated with replacing that obsolete part or component as well as all charges required to ensure that the remainder of the equipment is functionally compatible with that replacement part or component. In addition, Service Provider will not be required to make any changes or recommendations in the existing design or function of the unit(s) nor will Service Provider be obligated to install new attachments or parts upon the equipment as recommended or directed by insurance companies, governmental agencies or authorities, or any other third party. Any work not specifically covered under this agreement shall be at Purchaser's sole expense.

The Service Provider may propose changes to the Services by informing the Purchaser in writing. To be binding, such changes must be approved by authorized representatives of both parties in writing. The Parties may also, at any time, agree to add new Services at agreed prices to be covered by this Agreement. To be binding, such additions must be approved by corresponding authorized representatives of both parties in writing.

Pledge of Purchaser Satisfaction

- 3.1 In the event that Purchaser elects to undertake an audit of the service provided under this Agreement and any Location(s) Agreement, such audit must be announced in writing at least ten (10) working days in advance. If any non-compliance is identified in writing to the Service Provider at the address set forth in this Agreement, whether pursuant to an audit or under any other circumstances, the Service Provider will begin to take appropriate measures to remedy such non-compliance within thirty (30) days thereafter.
- 3.2 The Purchaser and the Service Provider shall appoint appropriate personnel to meet regularly at local and global levels and at such intervals as is deemed necessary to enable the parties to discuss and review the performance of both parties of their respective obligations under this Agreement. The reviews will take place in order to:
 - a) Monitor the effectiveness and efficiency with which this Agreement is being implemented;
 - b) Agree to mutual objectives and timescales;
 - c) Assess the overall performance of this Agreement by each party;
 - d) Review business implications, targets and risks;
 - e) Review whether this Agreement is being conducted in the spirit it was intended; and
 - f) Assess, under this review process, the need to amend or update the performance criteria included in this Agreement.

4. INDEPENDENT CONTRACTOR RELATIONSHIP:

Service Provider shall assume all duties under this Agreement as an independent contractor, and shall not be deemed for any purpose to be an agent, servant, or representative of Purchaser. Purchaser shall have no direct control of Service Provider, its agents, or subcontractors in the performance of the work hereunder. Nothing contained herein shall be construed to be inconsistent with such independent contractor relationship.

5. BY HIGHLY-TRAINED SERVICE PROVIDER PROFESSIONALS:

Service Provider employs and supervises elevator technicians who are among the most trusted in the industry and who will provide all maintenance courteously and dependably. Service Provider's elevator technicians receive ongoing training in general equipment development as well as advancements made to Purchaser's specific equipment.

6. ASSURANCE OF SERVICE PROVIDER'S STANDARD OF QUALITY:

To help increase elevator performance and decrease downtime, Service Provider's technicians utilize the latest industry methods and technology available to Service Provider for Purchaser's specific brand of equipment. They will be equipped with the tools, documentation and knowledge to troubleshoot Purchaser's unique system.

Behind Service Provider's technicians is a team devoted to elevator excellence. Technicians are supported around the clock by a family of engineers and field support experts. Service Provider's International Technical Support facility in Texas continuously researches advancements in the industry and in Purchaser's equipment.

7. EXTENT OF COVERAGE:

Service Provider will perform the following Services with respect to any equipment described on any fully executed location requirement:

7.1 TRACTION ELEVATORS:

Service Provider agrees to and shall maintain the traction elevator equipment described on any Location Agreements on the following terms and conditions:

7.1.1 Service Provider will use trained employees directly employed and supervised by Service Provider. Such employees shall be qualified to keep the Equipment properly adjusted, and Service Provider will use all reasonable care to maintain the Equipment in proper and safe operating condition.

7.1.2 Service Provider will regularly and systematically examine, adjust, clean and lubricate the following as required, and if conditions warrant, repair or replace the same:

7.1.2a Machine worm gear, thrust bearings, drive sheave, drive sheave shaft bearings, brake pulley and brake coil, contact linings and component parts;

7.1.2b Motor and motor generator, motor windings, rotating element, commutator, brushes, brush holders and bearings;

7.1.2c Silicon control rectifiers, reactors, filters, heat sinks, amp traps, transducers, and all control components;

7.1.2d Controller, selector and dispatching equipment, levelling devices and cams, all relays, solid state components, resistors, condensers, transformers, contacts, leads, dash pots, timing devices, computer and micro computer devices, steel selector cable or tape, and mechanical and electrical driving equipment;

7.1.2e Governor, governor sheave and shaft assembly, bearings, contacts, and governor jaws;

7.1.2f Deflector or secondary sheave, bearings, car and counterweight guide rails, top and bottom limit switches, governor tension sheave assembly, compensating sheaves assembly, counterweight and counterweight guide shoes including rollers or gibs;

7.1.2g Hoistway door interlocks and hangers, bottom door guides and auxiliary door closing devices and all fastening devices and associated reinforcement in attached components;

7.1.2.h Hoistway entrance door sill areas beyond the entrance frame opening; will be cleaned.

7.1.2i Automatic power operated door operator, car door hanger, car door contact, door protective device, car ventilation system platform, load weighing equipment, car safety mechanism, elevator car guide shoes, gibs or roller;

7.1.3 Service Provider shall maintain the individual minimum performance standards defined below:

7.1.3a "Start to Stop Time" as measured from the moment the car begins motion till the time it stops for a single floor run.

7.1.3b "Door Open Time" as measured from the fully closed door position to a fully open stopped position.

7.1.3c "Door Close Time" as measured from the fully open door position to a fully closed stopped position. Door closing pressure shall not exceed 30 lbs.

7.1.3d "Leveling Accuracy" as measured from car sill to landing sill at a fully stopped position under all load conditions.

7.1.3e "Rated Speed" as the same shall be that noted and shall not vary by more than 5% regardless of direction or load.

7.1.4 Service Provider shall maintain the Rated Speed in feet per minute, the original performance time, including acceleration and retardation as designed and installed by the manufacturer and perform the necessary adjustments as required to maintain the original Door Open Time and Door Close Time, within limits of applicable codes, or to adjust and maintain revised Door Open Time and/or door close Time upon direction of Purchaser.

7.1.5 Service Provider shall maintain smooth ride quality, smooth acceleration and deceleration and comfortable stop.

7.1.6. Service Provider shall maintain positive and quiet door operation with rapid and smooth checking at limits of travel. Service Provider shall annually, check the group dispatching systems and make necessary tests to insure that all circuits and time settings are properly adjusted and that the system performs as designed and installed by the manufacturer or to adjust and maintain revised settings upon direction of Purchaser.

7.1.7 Service Provider shall examine periodically all safety devices and governors and conduct an annual no-load test.

7.1.8 Service Provider shall calibrate load-weighing devices to Purchaser's selected settings, after annual and, as applicable, five-year safety tests are conducted.

7.1.9 Service Provider shall renew all wire ropes as often as is necessary to maintain an adequate factor of safety; equalize the tension on all hoist and compensation ropes, lubricate ropes appropriately and when necessary remove all residue and accumulated deposits from the rope surface and shorten ropes and chains as required to provide legal and reasonable bottom clearances.

7.1.10 Service Provider shall repair or replace conductor cables and hoistway and machine room elevator wiring in such a way as to maintain the percentage of spare conductors present at the acceptance of the location requirement. In no case shall the number of spare conductors be less than 5%.

7.1.11 Service Provider shall furnish lubricants compounded to the manufacturer's rigid specifications.

7.1.12 Service Provider shall make other safety tests recommended or directed by all applicable governmental authorities in force at the time of the acceptance of the Agreement. Service Provider shall not be required to install new attachments on the elevators recommended or directed by insurance companies, or by governmental

authorities, nor to make replacements with parts of a different design recommended or directed by insurance companies, or by governmental authorities.

7.1.13 Service Provider shall coordinate all testing requiring an independent witness or inspector with the Purchaser's appointed representative.

7.1.14 Service Provider shall not be required to make renewals or repairs necessitated by reason of Purchaser's negligence or Purchaser's misuse of the Equipment or by reason of any other cause beyond Service Provider's reasonable control except ordinary wear and tear.

7.1.15 Service Provider shall also maintain, and if conditions warrant, repair or replace the following auxiliary equipment:

7.1.15a All handicap devices;

7.1.15b All elevator related earthquake devices if applicable

7.1.16 Service Provider shall have no responsibility for the following items of Equipment, which are not included:

7.1.16a the finishing, repairing, or replacement of cab enclosure, hoistway door panels, door frames, sills, car flooring, floor covering, lighting fixtures, light bulbs and tubes, main line power switches, breaker, feeders to controller, alignment of elevator guide rails, smoke and fire sensors, fire service reports, air conditioners and all other items as set forth and excluded in this Agreement. Elevator signal light bulbs will be replaced during regular service calls.

7.2 HYDRAULIC ELEVATORS:

Service Provider agrees to and shall maintain the hydraulic elevator equipment described on any fully executed Location Agreements under the same terms and conditions described under 7.1 entitled "Traction Elevators," as the same are applicable to hydraulic elevators, with the following additions:

7.2.1 Service Provider shall have no responsibility for the following items of Equipment in addition to those listed in provision 7.1.16a above: the finishing, repairing, or replacement of cab enclosure, hoistway door panels, door frames, sills, car flooring, floor covering, lighting fixtures, light bulbs and tubes, main line power switches, breaker, feeders to controller, hydraulic elevator jack, hydraulic elevator outer casing, any type of underground piping or other material, alignment of elevator guide rails, smoke and fire sensors, fire service reports, air conditioners and all other items as set forth and excluded in this agreement. Elevator signal light bulbs will be replaced during regular service calls.

7.2.2 Filters, mufflers and muffler components are included.

7.2.3 Service Provider shall periodically examine all safety devices and conduct pressure tests and other tests required by ANSI A1 7.1 or other applicable codes.

7.2.4 Service Provider shall periodically conduct an inspection of hydraulic fluid to detect contaminants and assure proper viscosity, make necessary corrections and replace fluid as required and furnish hydraulic fluid compounded to the manufacturer's rigid specifications.

7.2.5 Service Provider shall clean excessive fluid leakage from pump pans, cylinder heads, machine room and pit floors.

7.3 ESCALATORS:

Service Provider agrees to and shall maintain the escalator equipment described on any Location Agreements under the same terms and conditions described under 7.1 entitled "Traction Elevators," as the same are applicable to escalators, with the following additions:

7.3.1. Controller, all relays, contacts, coils, resistance for operating and motor circuits, operating transformers and operating rectifier;

7.3.2 Handrail, handrail drive chains, handrail brush guards, handrail guide rollers, alignment devices, steps, step tread, step wheels, step chains, step axle bushings, comb plates, floor plates and tracks;

7.3.3 Upper drive, upper drive bearings, tension sprocket bearings, upper newel bearings, lower newel bearings;

7.3.4 All balustrade fastenings, deck and trim fastenings (screws, clips, etc.);

7.3.5 Skirt panels and panel finishes;

7.3.6 Escalator under-step lighting and balustrade panel and skirt lighting;

7.3.7 Upper and lower pit equipment spaces, pit lights, trusses and inclined truss pans.

7.3.8 Service Provider shall examine periodically (at intervals not longer than six months) all normal operating devices and equipment in accordance with ANSI A17.1, Section 1007 and conduct annual inspections and tests of all safety devices, brakes, step up thrust devices and governors in accordance with ANSI A17.1, Section 1008. If required, the governor will be calibrated and sealed for proper tripping speed.

7.3.9 Service Provider shall have no responsibility for the balustrade finishes, deck and trim finishes, wedge guards and exterior truss enclosures.

8. PARTS INVENTORY

Service Provider maintains a comprehensive parts inventory to support its field operations. Replacement parts are stored throughout North America in Service Provider's facilities and are normally available as necessary. Most specialized parts are available within 24 hours, seven days a week. All replacement parts used in Purchaser's vertical transportation equipment will be new or refurbished to meet the quality standards of Service Provider.

9. TESTING

Service Provider will, at its discretion and expense, perform governor and safety tests on traction elevators or annual relief pressure tests on hydraulic elevators per local and State codes. Service Provider assumes no responsibility for the operations of the governor or safety on traction elevators, or the hydraulic system on hydraulic elevators, under the terms of this Agreement until all applicable and governmentally-mandated tests have been made. Should the systems not meet applicable safety code requirements, it shall be the responsibility of the Purchaser, at its sole cost, to make necessary repairs and to place the equipment in a condition, which will be acceptable for coverage under the terms of this Agreement. Service Provider shall not be liable for damage to the building structure or the elevator resulting from any testing of any type or kind at any time.

10. COMPLIANCE WITH LAWS:

The rights and duties arising under this Agreement shall be governed by the laws of the State in which the Property is located. In performing the Services required under this Agreement, Service Provider shall comply with all applicable federal, state, county, and municipal statutes, ordinances and regulations. In the event that any portion of this Agreement is determined to be against public policy or statute, then all other provisions shall remain in full force and effect.

11. TERM:

Service under the terms and conditions of this Agreement shall be for an initial non-cancelable period of Five (5) years commencing on the date specified in the fully executed Location(s) Agreement and shall automatically be renewed for successive One (1) year periods thereafter, unless either party timely serves written notice upon the

other party of its intention to cancel at least ninety (90) days before the end of the initial Five (5) year period, or ninety (90) days before the end of any subsequent One (1) renewal period. Time is of the essence.

The term (length of contract) of maintenance agreements signed under the NJPA Contract may exceed the term of the NJPA Agreement. The terms and conditions of the NJPA Agreement in effect at the date the maintenance agreement is signed will remain in effect for the duration of members' local maintenance agreement. Maintenance Agreements can be as long as the NJPA members request provided they are in accordance with local laws and regulations.

12. AFTER HOURS WORK

All Services are to be provided during Service Provider's regular working hours of its regular working days unless otherwise specified below.

For specified locations marked as "Platinum" within the Exhibit "A", any overtime work requested by the Purchaser, Purchaser agrees to pay us for the difference between regular and overtime labor at our normal billing rates, including travel time, travel expenses, and time spent on the property.

13. PRICING:

Pricing (Please See Exhibit A) The Price of Service Provider's service as herein stated shall be specifically set forth on any fully executed Location Agreement(s), payable as agreed upon between the Service Provider and the Purchaser. Those prices are net of all taxes, duties and other levies. Those prices are valid for a period of one (1) year, commencing on the effective date of each respective Location(s) Agreement. Each such period of one year (365 consecutive days) shall be called a "Fixed Price Period". Since Service Provider's costs to provide Purchaser with the Services may increase, the Service Provider shall review and adjust the Monthly Payment Amount for each Location Agreement(s) at the end of each twelve (12) month period. Eighty percent (80%) of the Agreement price for each Location Agreement(s) shall be adjusted to reflect any increase in labor costs based on the straight time rate of elevator mechanics in the local area where the Property is located. The remaining twenty percent (20%) shall be adjusted to reflect any increase in material costs based on the Producer Price Index for Metals and Metal Products as published by the United States Department of Commerce, Bureau of Labor Statistics. However, in no event shall the total price escalations at the end of each twelve (12) month period be no more than four percent (4%) in any subsequent one (1) year period. Service Provider shall provide thirty (30) days advance written notice to Purchaser of all price adjustments referenced in this paragraph.

Should equipment covered by any Location Agreement be modified by the Purchaser during the pendency of any Location Agreement the parties will endeavor to reach a written agreement on a modified price for the Services applicable to that equipment. Should those parties fail to reach a written agreement on a modified price then that equipment will be removed from the applicable Location Agreement and the applicable Purchaser shall remain financially responsible to the Service Provider for the Service Provider's lost profits associated with the Services originally designated for that piece of equipment at the original, agreed-to price for the remaining term of the applicable Location Agreement. The price is subject to increase in the event the existing equipment is modified from its present state. A service charge of 1 ½% per month, or the highest legal rate, whichever is less, shall apply to delinquent accounts. Time is of the essence.

14. INSURANCE REQUIREMENTS:

At its sole expense, Service Provider shall carry and maintain throughout the term of any fully executed Location 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.

Before the commencement of the Services, Service Provider shall submit to Purchaser a Certificate of Insurance showing that all insurance requirements have been met. If any policy expires during the term of any fully executed Location Agreement(s), it shall automatically be renewed and a new Certificate of Insurance shall be sent immediately to Purchaser.

Workers' Compensation Statutory Limits

Employer's Liability \$1,000,000 each accident
 \$1,000,000 policy limit-disease
 \$1,000,000 disease-each employee

General Liability

This shall include all major divisions of coverage and be on a commercial occurrence form. It shall include premises operations, products and completed operations, contractual, and personal injury.

Limits Primary: \$2,000,000 each occurrence – BI & PD
 \$2,000,000 general aggregate
 \$2,000,000 personal injury & adv. Injury

Automobile Liability and Property Damage

This shall be on an occurrence basis with a combined single limit of \$2,000,000. It shall include all automobiles owned, leased, hired or non-owned.

15. PURCHASER RESPONSIBILITIES:

Product Information. Purchaser agrees to provide Service Provider with current wiring diagrams that reflect all changes, parts catalogs, and maintenance instructions for the equipment covered by this agreement. Purchaser agrees to authorize Service Provider to produce single copies of any programmable device(s) used in the equipment for the purpose of archival back up of the software embodied therein. These items will remain Purchaser's property.

Safety. Purchaser agrees to instruct or warn passengers in the proper use of the equipment and to keep the equipment under continued surveillance by competent personnel to detect irregularities between elevator examinations. Purchaser agrees to report immediately any condition that may indicate the need for correction before the next regular examination. Purchaser agrees to shut down the equipment immediately upon manifestation of any irregularities in operation or appearance of the equipment, notifying Service Provider at the address and phone number listed on any fully executed Location(s) Agreement at once, and written notice within ten (10) days after any occurrence or accident in or about the elevator. Purchaser agrees to provide Service Provider's personnel a safe place in which to work. Service Provider reserves the right to discontinue work in the building whenever, in Service Provider's sole opinion, Service Provider's personnel do not have a safe place in which to work. Purchaser agrees to provide a suitable machine room including secured doors, waterproofing, lighting, ventilation and heat to maintain the room at a temperature of 50°F minimum to 90°F maximum. Purchaser also agrees to maintain the elevator pit in a dry condition at all times. Should water or other liquids become present, Purchaser will contract with others for removal and the proper handling of such liquids.

Other. Purchaser agrees not to permit others to make alterations, additions, adjustment, or repairs or replace any component or part of equipment during the term of any fully executed Location(s) Agreement. Purchaser agrees to accept Service Provider's judgment as to the means and methods to be employed for any corrective work under this agreement. In the event of the sale, lease or other transfer of the elevator(s) or equipment described in any fully executed Location(s) Agreement, or the premises in which they are located, Purchaser agrees to see that such successor is made aware of that Location(s) Agreement and assumes and agrees to be bound by the terms of those documents for the balance of the Location(s) Agreement, and subject to termination herein provided, or otherwise be liable for the full unpaid balance due for the full unexpired term of the Location(s) Agreement.

Items Not Covered. Service Provider does not cover 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, hoistway 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 outer casing, buried piping, alignment of elevator guide rails, smoke and fire sensors, fire service reports, intercommunication devices, security systems not installed by Service Provider, batteries for emergency lighting and lowering, air conditioners, heaters, ventilation fans and all other items as set forth and excluded in this Agreement.

16. EXCLUSIVITY

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.

17. EXCUSABLE DELAYS

The Service Provider shall not be liable for delay in performing or for failure to perform its obligations under this Agreement or any location requirement if such delay or failure results from any of the following causes: (i) Acts of God, (ii) the act of any government or authority (including the denial or cancellation of any export license or other necessary license), (iii) the outbreak of wars, terrorism, insurrections, (iv) fire, explosion, flood (v) and strike, lock-out or other industrial action which is beyond the Service Provider's control or (vi) any other cause of any nature which is beyond the applicable Service Provider's control.

18. TERMINATION AND REMEDIES

18.1 The Service Provider has the right (but not the obligation) to terminate this Agreement or any location Agreement with 30 day's prior written notice in case of the Purchaser's failure to comply with any terms of this Agreements or any Location Agreement. Termination of a Location(s) Agreement shall not have 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.

18.2 The provisions of this Agreement, and the right and remedies of a party in the event of the other party's breach under this Agreement (including the breach of any warranty) are cumulative and are without prejudice to all other rights and remedies available to it and may have at law or otherwise; no exercise by a party of any one right or remedy under this Agreement, or at law or otherwise, shall operate so as to hinder or prevent the exercise of any other such right or remedy. However, in no event shall one party to this Agreement be liable to the other party for any indirect or consequential loss or damage, including but not limited to loss of profit, loss of production, loss of interest or otherwise, which may be suffered by the other party in connection with the entering into or operation of this Agreement.

19. ASSIGNMENT

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 Purchaser; use subcontractors for the performance of any Services purchased by the Purchaser under this Agreement or 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.

20. HEALTH & SAFETY, ENVIRONMENTAL AND QUALITY

The Service Provider and the Purchaser shall work towards the prevention of accidents aiming for zero accidents and the creation of a safer work environment.

21. ETHICAL COMMITMENT

The Service Provider has an extensive corporate compliance program and its employees are expected to maintain the highest level of ethical and legal conduct at all times during the term of the Agreement and expects the Purchaser to act in a like manner. Should the Purchaser suspect that the Service Provider or its employees have engaged in any illegal or

unethical conduct, such suspicions must be reported through the Service Provider's toll-free compliance hotline at 1-866-572-1739.

22. MISCELLANEOUS

22.1 The headings in this Agreement shall not affect its interpretation.

22.2 Throughout this Agreement, whenever required by context, the use of the singular number shall be construed to include the plural, and the use of the singular number shall be construed to include the plural, and the use of the plural the singular, and the use of any gender shall include all genders.

22.3 Should any term or provision in this Agreement shall be held to be illegal or unenforceable, in whole or in part, under any enactment or rule of law, such term or provision or part shall to that extent be deemed not to form part of this Agreement but the validity and enforceability of the remainder of this Agreement shall not be affected.

22.4 The waiver or forbearance or failure of a party in insisting in any one or more instances upon the performance of any provision of this Agreement shall not be construed as a waiver or relinquishment of that party's right to future performance of such provision and the other party's obligations in respect of such future performance shall continue in full force and effect.

22.5 In the event a third party is retained to enforce, construe or defend any of the terms and conditions of this Agreement or to collect any monies due thereunder, either with or without litigation, the prevailing party shall be entitled to recover all costs and reasonable attorney's fees.

22.6 Purchaser hereby waives trial by jury and agrees that 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 this that Location(s) Agreement.

22.7 The liability of the Service Provider under this Agreement shall not exceed the value of the Services remaining on the then current and unexpired term of the applicable Location(s) Agreement.

22.8 This Agreement supersedes all prior oral or written agreement between the Service Provider and the Purchaser and constitutes the entire agreement between the parties with respect to the services and work performed hereunder.

23 NOTICES:

Every notice or other communication to be given by either party to the other with respect to this Agreement(s), shall be given by personal delivery, by facsimile or by United States registered or certified mail postage prepaid, return receipt requested, addressed as hereinafter provided. Except as otherwise specified herein, the time period in which a response to any notice or other communication must be made, if any, shall commence to run on the earliest to occur of (a) if by personal delivery, the date of receipt, or attempted delivery, if such communication is refused; (b) if given by telecopy, the date on which such telecopy is transmitted and confirmation of delivery, or attempted delivery, thereof is received; and (c) if sent by mail (as aforesaid), the date of receipt or delivery is refused. Until further notice, notices and other communications under this Agreement shall be addressed to the parties at:

If to purchaser;

City of Costa Mesa, California
77 Fair Drive
PO Box 1200
Costa Mesa, CA 92628-1200
Attn: Doug Lovell

With a copy to;

City of Costa Mesa, California
77 Fair Drive
PO Box 1200
Costa Mesa, CA 92628-1200
Attn: Finance Dept. - Purchasing

If to service provider;

thyssenkrupp Elevator Corporation
114 Town Park Drive NW, Suite 300
Kennesaw, GA 30144
Attn: International Account Contract Administrator

With copy to;

thyssenkrupp Elevator Corporation
1601 S. Sunkist St. Suite E
Anaheim, CA. 92806
Attn: Account Manager

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

CITY OF COSTA MESA
(PURCHASER)

BY: *Thomas R. Hatch*

NAME: Thomas Hatch

TITLE: City Manager

DATE: 7/12/17

THYSSENKRUPP ELEVATOR CORPORATION
(SERVICE PROVIDER)

BY: *Jeff Sprosty*

NAME: Jeff Sprosty

TITLE: Branch Account Executive Manager

DATE: 6/28/17

BY: *Mark Hintz*

NAME: Mark Hintz

TITLE: Vice President Contracts Dept.

DATE: 6/22/17

ATTEST:

Brenda Green
City Clerk



Date: 7/13/17

APPROVED AS TO FORM:

[Signature]
City Attorney

Date: 07/06/17

APPROVED AS TO INSURANCE:

[Signature]
Risk Management

Date: 7/5/17

DEPARTMENTAL APPROVAL:

Battaglia
For Public Services Director

Date: 7-5-17

APPROVED AS TO PURCHASING:

Stephen Dumivent
Interim Finance Director
MF

Date: 7-06-17

Exhibit "A"

Property list/Location Contract Type and Price

Location Name –City of Costa Mesa

Location Address-77 Fair Drive, Costa Mesa, CA 92628-1200

Entity Code

Unit Count-7

Unit Type-Traction, hydro, lifts

Contract Type-Platinum-See attached w/ unit information

Contract Price: \$1,553.81 per month--\$4661.43 per quarter

Billing Frequency (Monthly, Quarterly, Annually)

Additional terms included:

- A) TKE has 30 days from signing of the contract to survey both City Hall traction elevators due to 1967 hoist machines. Elevator cables will be prorated over a 5 year term. Any major repairs needed will be identified and not covered under this agreement.
- B) Yearly escalation cap is 4%.
- C) All handicap lift and dumbwaiter units are oil and grease only which includes two service visits a year. Additional service visits or parts are not included in this contract.
- D) NJPA special discounted billing rates apply.
- E) 30 day out with cause for non-performance. TKE will have 30 days to cure.

Description	Type	OEM	CAP/DUTY	Bid Price	Unit Scope			
					HY	WCH	CBLE	
City of Costa Mesa								
City Hall	CABLE - 153844	Montgomery	6/6	\$549.74			1	
City Hall	CABLE - 153844	Montgomery	6/6	\$549.74			1	
City Hall-Council Chambers	CHR Lift	Garaventa	2/2	\$38.78		1		
City Hall-Council Chambers	CHR Lift	Other	2/2	\$38.78		1		
Costa Mesa Senior CNTR	HY-103268	TK-2011	2/2	\$299.21	1			
Costa Mesa Senior CNTR	CHR Lift-169449	Other	2/2	\$38.78		1		
Mesa Verde Library	CHR Lift-42665	Other	2/2	\$38.78		1		
Total				\$1,553.81				