

## CITY OF SANTA FE

## ELEVATOR MAINTENANCE SERVICE CONTRACT

THIS AGREEMENT is made and entered into by and between the City of Santa Fe, New Mexico, hereinafter referred to as the "City," and **Thyssenkrupp Elevator Corporation**, hereinafter referred to as the "Contractor," and is effective as of the date set forth below upon which it is executed by the Parties.

## IT IS AGREED BETWEEN THE PARTIES:

**1. Scope of Work.**

A. The Contractor shall perform the following work:

Contractor agrees to maintain the City's elevator equipment as set forth in the attached and incorporated EXHIBIT A and EXHIBIT B.

B. Performance Measures.

Contractor shall substantially perform the following Performance Measures as set forth in the attached and incorporated EXHIBIT A and EXHIBIT B.

**2. Compensation.**

A. The City shall pay to the Contractor in full payment for services satisfactorily performed at the rate of two thousand three hundred twenty dollars (\$2,320.00) per month, excluding taxes, as set forth in the attached and incorporated EXHIBIT A and EXHIBIT B. Such compensation not to exceed (\$55,680.00), excluding gross receipts tax. The New Mexico gross receipts tax levied on the amounts payable under this Agreement totaling (\$4,698.00) shall be paid by the City to the Contractor. **The total amount payable to the Contractor under this Agreement, including gross receipts tax and expenses, shall not exceed (\$60,378.00). This amount is a maximum and not a guarantee that the work assigned to be performed by Contractor under this Agreement shall equal the amount stated herein. The parties do not intend for the Contractor to continue to provide services without compensation when the total compensation amount is reached. Contractor is responsible for notifying the City when the services provided under this Agreement reach the total compensation amount. In no event will the Contractor be paid for services provided in excess of the total compensation amount without this Agreement being amended in writing prior to those services in excess of the total compensation amount being provided.**

B. Payment is subject to availability of funds pursuant to the Appropriations Paragraph set forth below and to any negotiations between the parties from year to year pursuant to Paragraph 1, Scope of Work, and to approval by the City. All invoices **MUST BE** received by the City no later than thirty (30) days after the termination of the Fiscal Year in which the services were delivered. Invoices received after such date **WILL NOT BE PAID.**

C. Contractor must submit a detailed statement accounting for all services performed and expenses incurred. If the City finds that the services are not acceptable, within thirty days after the date of receipt of written notice from the Contractor that payment is requested, it shall provide the Contractor a letter of exception explaining the defect or objection to the services, and outlining steps the Contractor may take to provide remedial action. Upon certification by the City

that the services have been received and accepted, payment shall be tendered to the Contractor within thirty days after the date of acceptance. If payment is made by mail, the payment shall be deemed tendered on the date it is postmarked. However, the City shall not incur late charges, interest, or penalties for failure to make payment within the time specified herein.

3. **Term.**

THIS AGREEMENT SHALL NOT BECOME EFFECTIVE UNTIL APPROVED BY THE CITY. This Agreement shall terminate on **June 30, 2021** unless terminated pursuant to paragraph 4 (Termination), or paragraph 5 (Appropriations). In accordance with Section 13-1-150 NMSA 1978, no contract term for a professional services contract, including extensions and renewals, shall exceed four years, except as set forth in Section 13-1-150 NMSA 1978.

4. **Termination.**

A. **Termination.** This Agreement may be terminated by either of the parties hereto upon written notice delivered to the other party at least thirty (30) days prior to the intended date of termination. Except as otherwise allowed or provided under this Agreement, the City's sole liability upon such termination shall be to pay for acceptable work performed prior to the Contractor's receipt of the notice of termination, if the City is the terminating party, or the Contractor's sending of the notice of termination, if the Contractor is the terminating party; provided, however, that a notice of termination shall not nullify or otherwise affect either party's liability for pre-termination defaults under or breaches of this Agreement. The Contractor shall submit an invoice for such work within thirty (30) days of receiving or sending the notice of termination. Notwithstanding the foregoing, this Agreement may be terminated immediately upon written notice to the Contractor if the Contractor becomes unable to perform the services contracted for, as determined by the City or if, during the term of this Agreement, the Contractor or any of its officers, employees or agents is indicted for fraud, embezzlement or other crime due to misuse of City funds or due to the Appropriations paragraph herein. ***THIS PROVISION IS NOT EXCLUSIVE AND DOES NOT WAIVE THE City's OTHER LEGAL RIGHTS AND REMEDIES CAUSED BY THE CONTRACTOR'S DEFAULT/BREACH OF THIS AGREEMENT.***

B **Termination Management.** Immediately upon receipt by either the City or the Contractor of notice of termination of this Agreement, the Contractor shall: 1) not incur any further obligations for salaries, services or any other expenditure of funds under this Agreement without written approval of the City; 2) comply with all directives issued by the City in the notice of termination as to the performance of work under this Agreement; and 3) take such action as the City shall direct for the protection, preservation, retention or transfer of all property titled to the City and records generated under this Agreement. Any non-expendable personal property or equipment provided to or purchased by the Contractor with contract funds shall become property of the City upon termination and shall be submitted to the City as soon as practicable.

5. **Appropriations.**

The terms of this Agreement are contingent upon sufficient appropriations and authorization being made by the City Council for the performance of this Agreement. If sufficient appropriations and authorization are not made by the City Council, this Agreement shall terminate immediately upon written notice being given by the City to the Contractor. The City's decision as to whether sufficient appropriations are available shall be accepted by the Contractor and shall be

final. If the City proposes an amendment to the Agreement to unilaterally reduce funding, the Contractor shall have the option to terminate the Agreement or to agree to the reduced funding, within thirty (30) days of receipt of the proposed amendment.

**6. Status of Contractor.**

The Contractor and its agents and employees are independent contractors performing professional services for the City and are not employees of the City. The Contractor and its agents and employees shall not accrue leave, retirement, insurance, bonding, use of City vehicles, or any other benefits afforded to employees of the City as a result of this Agreement. The Contractor acknowledges that all sums received hereunder are reportable by the Contractor for tax purposes, including without limitation, self-employment and business income tax. The Contractor agrees not to purport to bind the City unless the Contractor has express written authority to do so, and then only within the strict limits of that authority.

**7. Assignment.**

The Contractor shall not assign or transfer any interest in this Agreement or assign any claims for money due or to become due under this Agreement without the prior written approval of the City.

**8. Subcontracting.**

The Contractor shall not subcontract any portion of the services to be performed under this Agreement without the prior written approval of the City. No such subcontract shall relieve the primary Contractor from its obligations and liabilities under this Agreement, nor shall any subcontract obligate direct payment from the City.

**9. Release.**

Final payment of the amounts due under this Agreement shall operate as a release of the City, its officers and employees from all liabilities, claims and obligations arising from or under this Agreement with regards to payment on account of labor, materials or services previously furnished by and paid to Contractor.

**10. Confidentiality.**

Any confidential information provided to the Contractor in the performance of this Agreement shall be kept confidential and shall not be made available to any individual or organization by the Contractor without the prior written approval of the City.

**11. Product of Service -- Copyright.**

All materials acquired by the Contractor specifically on behalf of the City for which the City has paid consideration to the Contractor for its acquisition under this Agreement shall become the property of the City and shall be delivered to the City no later than the termination date of this Agreement. However for purposes of clarification, "work product" furnished to the City by the Contractor which Contractor reasonably deems proprietary in nature or otherwise essential to Contractor's business operations shall not be considered "works made for hire". Contractor hereby specifically reserves all rights related thereto, including but not limited to copyrights or other intellectual property rights. Any deviation from the foregoing reservation of Contractor's rights

hereunder shall be evidenced only by separate written agreement of the parties, setting forth with all reasonable specificity the extent to which such reserved rights are relinquished to City.

**12. Conflict of Interest; Governmental Conduct Act.**

A. The Contractor represents and warrants that it presently has no interest and, during the term of this Agreement, shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance or services required under the Agreement.

B. The Contractor further represents and warrants that it has complied with, and, during the term of this Agreement, will continue to comply with, and that this Agreement complies with all applicable provisions of the Governmental Conduct Act, Chapter 10, Article 16 NMSA 1978.

C. Contractor's representations and warranties in Paragraphs A and B of this Article 12 are material representations of fact upon which the City relied when this Agreement was entered into by the parties. Contractor shall provide immediate written notice to the City if, at any time during the term of this Agreement, Contractor learns that Contractor's representations and warranties in Paragraphs A and B of this Article 12 were erroneous on the effective date of this Agreement or have become erroneous by reason of new or changed circumstances. If it is later determined that Contractor's representations and warranties in Paragraphs A and B of this Article 12 were erroneous on the effective date of this Agreement or have become erroneous by reason of new or changed circumstances, in addition to other remedies available to the City and notwithstanding anything in the Agreement to the contrary, the City may immediately terminate the Agreement.

D. All terms defined in the Governmental Conduct Act have the same meaning in this section.

**13. Amendment.**

A. This Agreement shall not be altered, changed or amended except by instrument in writing executed by the parties hereto and all other required signatories.

B. If the City proposes an amendment to the Agreement to unilaterally reduce funding due to budget or other considerations, the Contractor shall, within thirty (30) days of receipt of the proposed Amendment, have the option to terminate the Agreement, pursuant to the termination provisions as set forth in Article 4 herein, or to agree to the reduced funding.

**14. Merger.**

This Agreement incorporates all the Agreements, covenants and understandings between the parties hereto concerning the subject matter hereof, and all such covenants, Agreements and understandings have been merged into this written Agreement. No prior Agreement or understanding, oral or otherwise, of the parties or their agents shall be valid or enforceable unless embodied in this Agreement.

**15. Penalties for violation of law.**

The Procurement Code, Sections 13-1-28 through 13-1-199, NMSA 1978, imposes civil and criminal penalties for its violation. In addition, the New Mexico criminal statutes impose felony penalties for illegal bribes, gratuities and kickbacks.

**16. Equal Opportunity Compliance.**

The Contractor agrees to abide by all federal and state laws and rules and regulations, and Santa Fe City Code, pertaining to equal employment opportunity. In accordance with all such laws of the State of New Mexico, the Contractor assures that no person in the United States shall, on the grounds of race, religion, color, national origin, ancestry, sex, age, physical or mental handicap, or serious medical condition, spousal affiliation, sexual orientation or gender identity, be excluded from employment with or participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity performed under this Agreement. If Contractor is found not to be in compliance with these requirements during the life of this Agreement, Contractor agrees to take appropriate steps to correct these deficiencies.

**17. Applicable Law.**

The laws of the State of New Mexico shall govern this Agreement, without giving effect to its choice of law provisions. Venue shall be proper only in a New Mexico court of competent jurisdiction in accordance with Section 38-3-1 (G) NMSA 1978. By execution of this Agreement, Contractor acknowledges and agrees to the jurisdiction of the courts of the State of New Mexico over any and all lawsuits arising under or out of any term of this Agreement.

**18. Workers Compensation.**

The Contractor agrees to comply with state laws and rules applicable to workers compensation benefits for its employees. If the Contractor fails to comply with the Workers Compensation Act and applicable rules when required to do so, this Agreement may be terminated by the City.

**19. Professional Liability Insurance. Intentionally omitted.**

**20. Other Insurance**

If the services contemplated under this Agreement will be performed on or in City facilities or property, Contractor shall maintain in force during the entire term of this Agreement, the following insurance coverage(s), naming the City as additional insured. Such additional insured coverage shall only apply to the extent any damages covered by the policy are determined to be caused by Contractor's acts, actions, omissions or neglects and not to the extent caused by the additional insured's own acts, actions, omissions, or neglects or for bare allegations.

A. Workers Compensation (including accident and disease coverage) at the statutory limit.  
Employers liability: \$100,000.

B. Comprehensive general liability (including endorsements providing broad form property damage, personal injury coverage and contractual assumption of liability for all liability the Contractor has assumed under this contract). Limits shall not be less than the following:

- a. Bodily injury: \$1,000,000 per person /\$1,000,000 per occurrence.

- b. Property damage or combined single limit coverage: \$1,000,000.
- c. Automobile liability (including non-owned automobile coverage): \$1,000,000.
- d. Umbrella: \$1,000,000.

C. Contractor shall maintain the above insurance for the term of this Agreement and name the City as an additional insured and provide for 30 days cancellation notice on any Certificate of Insurance form furnished by Contractor. Such additional insured coverage shall only apply to the extent any damages covered by the policy are determined to be caused by Contractor's acts, actions, omissions or neglects and not to the extent caused by the additional insured's own acts, actions, omissions, or neglects or for bare allegations. Such certificate shall also specifically state the coverage provided under the policy is primary over any other valid and collectible insurance and provide a waiver of subrogation.

**21. Records and Financial Audit.**

The Contractor shall maintain detailed time and expenditure records that indicate the date; time, nature and cost of services rendered during the Agreement's term and effect and retain them for a period of three (3) years from the date of final payment under this Agreement. The records shall be subject to inspection by the City. The City shall have the right to audit billings both before and after payment. Payment under this Agreement shall not foreclose the right of the City to recover excessive or illegal payments

**22. Indemnification.**

The Contractor shall defend, indemnify and hold harmless the City from all actions, proceeding, claims, demands, costs, damages, attorneys' fees and all other liabilities and expenses of any kind from any source which may arise out of the performance of this Agreement, but only to the extent caused by the negligent act or failure to act of the Contractor, its officers, employees, servants, subcontractors or agents, or if caused by the actions of any client of the Contractor resulting in injury or damage to persons or property during the time when the Contractor or any officer, agent, employee, servant or subcontractor thereof has or is performing services pursuant to this Agreement. In the event that any action, suit or proceeding related to the services performed by the Contractor or any officer, agent, employee, servant or subcontractor under this Agreement is brought against the Contractor, the Contractor shall, as soon as practicable but no later than two (2) days after it receives notice thereof, notify the legal counsel of the City. For purposes of clarification, indemnity, defend and hold harmless is limited to Contractor's acts and actions and in no way includes the acts, actions, omissions, neglects or bare allegations of another party. Notwithstanding anything to the contrary in this Agreement, in no event shall Contractor be responsible for consequential, indirect, incidental, exemplary, special, punitive, or liquidated damages.

**23. New Mexico Tort Claims Act**

Any liability incurred by the City of Santa Fe in connection with this Agreement is subject to the immunities and limitations of the New Mexico Tort Claims Act, Section 41-4-1, et. seq. NMSA 1978, as amended. The City and its "public employees" as defined in the New Mexico Tort Claims Act, do not waive sovereign immunity, do not waive any defense and do not waive any limitation of liability pursuant to law. No provision in this Agreement modifies or waives any provision of the New Mexico Tort Claims Act.

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**24. Invalid Term or Condition.**

If any term or condition of this Agreement shall be held invalid or unenforceable, the remainder of this Agreement shall not be affected and shall be valid and enforceable.

**25. Enforcement of Agreement.**

A party's failure to require strict performance of any provision of this Agreement shall not waive or diminish that party's right thereafter to demand strict compliance with that or any other provision. No waiver by a party of any of its rights under this Agreement shall be effective unless express and in writing, and no effective waiver by a party of any of its rights shall be effective to waive any other rights.

**26. Notices.**

Any notice required to be given to either party by this Agreement shall be in writing and shall be delivered in person, by courier service or by U.S. mail, either first class or certified, return receipt requested, postage prepaid, as follows:

To the City: City of Santa Fe Parking Division, Attn: Contracts Analyst, P.O. Box 909, Santa Fe, NM 87504-0909.


To the Contractor: Thyssenkrupp Elevator Corporation, Attn: Liesje Gebler, 8500 Washington Street Northeast #A4, Albuquerque, NM 87113 and [Liesje.gebler@thyssenkrupp.com](mailto:Liesje.gebler@thyssenkrupp.com).

**27. Authority.**

If Contractor is other than a natural person, the individual(s) signing this Agreement on behalf of Contractor represents and warrants that he or she has the power and authority to bind Contractor, and that no further action, resolution, or approval from Contractor is necessary to enter into a binding contract.

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the date of the signature by the required approval authorities below.

CITY OF SANTA FE:

  
ERIK LITZENBERG, CITY MANAGER

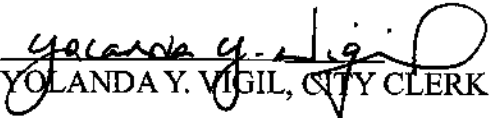

DATE: 8/9/16

CONTRACTOR:

Thyssenkrupp Elevator Corporation

 6/27/19  
LIESJE GEBLER, BRANCH MANAGER


ATTEST:

  
YOLANDA Y. VIGIL, CITY CLERK 

APPROVED AS TO FORM:

 7/8/17  
ERIN K. MCSHERRY, CITY ATTORNEY

APPROVED:

  
MARY MCCOY, FINANCE DIRECTOR  
52155.520300 and 52102.510310  
Business Unit / Line Item

# EXHIBIT A

## Gold Service Agreement

**Purchaser:** City of Santa Fe Parking  
500 Market Street Northwest  
Santa Fe, NM 87501-7322

Hereinafter referred to as "Purchaser", "you", and "your".

**By:** ThyssenKrupp Elevator Corporation  
8500 Washington St NE Ste A4  
Albuquerque, NM 87113  
Phone: 505-856-5800  
Fax: 866-768-8120  
www.thyssenkruppelevator.com

Hereinafter referred to as "ThyssenKrupp Elevator Corporation", "ThyssenKrupp Elevator", "we", "us" and "our".

### GOLD SERVICE AGREEMENT

ThyssenKrupp Elevator agrees to maintain Purchaser's elevator equipment described below in accordance with this agreement. We will endeavor to provide a comprehensive maintenance program designed to protect your investment and maximize the performance, safety, and life span of the elevator equipment to be maintained.

**Equipment To Be Maintained**

Building Name	Building Location	Manufacturer	Type Of Unit	Unit ID	# Of Stops
Convention Elevator 1	201 W Marcy Street	TKE	Hydraulic	EW7821	4
Convention Elevator 2	201 W Marcy Street	TKE	Hydraulic	EW7820	4
Convention Elevator 3	201 W Marcy Street	TKE	Hydraulic	EW7819	4
Convention Elevator 4	201 W Marcy Street	TKE	Hydraulic	EW7818	4
Convention Elevator Service	201 W Marcy Street	TKE	Hydraulic	EW7817	4
Sandoval Parking 1	211 W San Francisco Street	Dover	Hydraulic	E97819	3
Sandoval Parking 2	211 W San Francisco Street	Dover	Hydraulic	E97818	3
SF Parking Office Elevator	500 Market Street Northwest	Kone	Hydraulic	20269189	2
SF Parking Garage 1	500 Market Street Northwest	Kone	Geared	20263741	4
SF Parking Garage 2	500 Market Street Northwest	Kone	Geared	20263742	4
SF Theatre Elevator	500 Market Street Northwest	Kone	Geared	20263743	6

**ThyssenKrupp Elevator Americas**



**ThyssenKrupp**

# Gold Service Agreement

## **Preventative Maintenance Program**

We will service your equipment described in this agreement on a regularly scheduled basis. These service visits will be performed during normal business working days and hours, which are defined as Monday through Friday, 8:00 AM to 4:30 PM (except scheduled holidays). All work performed before or after normal business working days and hours shall be considered "Overtime".

ThyssenKrupp Elevator will perform the following services:

- Examine your elevator equipment for optimum operation. Our examination, lubrication and adjustment will cover the following components of your elevator system:
  - o Control and landing positioning systems
  - o Signal fixtures
  - o Machines, drives, motors, governors, sheaves, and wire ropes
  - o Power units, pumps, valves, and jacks
  - o Car and hoistway door operating devices and door protection equipment
  - o Loadweighers, car frames and platforms, and counterweights
  - o Safety mechanisms
- Lubricate equipment for smooth and efficient performance
- Adjust elevator parts and components to maximize performance and safe operation

## **Full Coverage Parts Repair and Replacement**

ThyssenKrupp Elevator will provide full coverage parts repair and/or replacement for all components worn due to normal wear, unless specifically excluded in the "Items Not Covered" or "Other Conditions" provisions herein. We maintain a comprehensive parts inventory to support our field operations. All replacement parts used in your equipment will be new or refurbished to meet the quality standards of ThyssenKrupp Elevator. Most specialized parts are available within 24 hours, seven days a week. We will relamp all signals as required (during regularly scheduled visits).

## **Maintenance Control Program**

ThyssenKrupp Elevator performs service in accordance with A17.1 – 2010 / CSA B44-10. Section 8.6 of the code requires the unit owner to have a Maintenance Control Program (MCP), ThyssenKrupp's MCP meets or exceeds all requirements outlined in Section 8.6. The Maintenance Control Program includes ThyssenKrupp Elevator's Maintenance Tasks & Records documentation which shall be used to record all maintenance, repairs, replacements and tests performed on the equipment and is provided with each unit as required by code. ThyssenKrupp Elevator also provides per Section 8.6 of the code, a maintenance tasks procedures manual with each unit; TKE calls this manual the BEEP Manual, or Basic Elevator, Escalator Procedures Manual. We do not perform any tests unless such tests are specifically listed as included elsewhere in this agreement.

## **Quality Assurance**

To help increase elevator performance and decrease downtime, our technicians utilize the latest industry methods and technology available to us for your specific brand of elevator. They will be equipped with our tools, documentation and knowledge to troubleshoot your unique system, as well as access to a comprehensive parts replacement inventory system.

Behind our technicians is a team devoted to elevator excellence. Technicians are supported around the clock by a team of engineers and field support experts. Our North American technical support facilities continuously research advancements in the industry and in your equipment. Also, our internal quality control program ensures optimum and reliable operation of your elevator equipment.

To assure that quality standards are being maintained, we may conduct periodic field quality audit surveys. Your

# Gold Service Agreement

dedicated ThyssenKrupp Elevator representative will be available to discuss your elevator needs with you in all aspects of service and modernization. In addition, you may receive recommendations for upgrades that will also provide you with budget options designed to enhance the appearance, performance and safety of or meet Code requirements for your equipment over time.

## **Service Requests During Normal Working Days and Hours**

Service requests are defined as any request for dispatch of our technician to the location of the equipment covered in this agreement from one or more of the following: you or your representative, the building or building's representative, emergency personnel, and/or passengers through the elevator's communication device and/or from MAX Remote Monitoring through the elevator's communication line. Service requests include minor adjustments and response to emergency entrapments that can be accomplished in two hours or less (excluding travel time) and do not include regularly scheduled maintenance visits.

We will respond to service requests during normal business working days and hours, as defined above, at no additional charge.

## **Overtime Service Requests**

On all overtime service requests, you will be responsible for all labor costs including travel time, travel expenses, and time spent on the job. Such costs will be invoiced at our standard overtime billing rates. Overtime service requests are performed before or after normal business working days and hours.

## **Digital Customer Experience**

MAX is a cloud based Internet of Things (IoT) platform that we, at our election, may connect to your elevator and escalator by installing a remote-monitoring device.

MAX will analyze the unique outputs of your equipment 24/7 and when existing or potential outages are identified MAX will automatically communicate with our dispatch center. When appropriate, the dispatch center will alert our technicians during normal working hours. These MAX alerts provide the technicians with precise diagnostic detail, which greatly enhances our ability to fix your equipment right the first time, MAXimizing the equipment uptime. For additional terms and conditions see MAX considerations.

## **☐ Service History Website:**

This agreement includes Premium access to ThyssenKrupp Elevator's website in accordance with the following terms and conditions. During the term of this Agreement, ThyssenKrupp Elevator agrees to provide Purchaser with a user name and password to ThyssenKrupp Elevator's website for access to maintenance and service call data generated following the effective date of this Agreement. Purchaser shall, at its sole cost, provide and ensure the functioning integrity of its own hardware, software and internet connection necessary to access the website. By executing this Agreement, Purchaser acknowledges that any work performed by ThyssenKrupp Elevator modernization and/or construction personnel may not be included or accessible on the website. ThyssenKrupp Elevator reserves the right to restrict access to the website if any of Purchaser's accounts with ThyssenKrupp Elevator has an outstanding unpaid balance greater than 30 days or in the event of anticipated or pending litigation of any kind.

THE WEBSITE IS PROVIDED TO CUSTOMER "AS IS" AND WITH ALL FAULTS AND DEFECTS WITHOUT WARRANTY OF ANY KIND. TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, THYSSENKRUPP ELEVATOR EXPRESSLY DISCLAIMS ALL WARRANTIES, WHETHER EXPRESS, IMPLIED, STATUTORY OR OTHERWISE WITH RESPECT TO THE WEBSITE INCLUDING ALL IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE AND NON-INFRINGEMENT, AND WARRANTIES THAT MAY ARISE OUT OF COURSE OF DEALING, COURSE OF PERFORMANCE, USAGE OR TRADE PRACTICE. WITHOUT LIMITATION TO THE FOREGOING, THYSSENKRUPP ELEVATOR PROVIDES NO WARRANTY OR UNDERTAKING, AND MAKES NO REPRESENTATION OF ANY KIND THAT THE CP WILL BE ACCESSIBLE TO CUSTOMER, ACHIEVE ANY INTENDED RESULTS, MEET CUSTOMER'S REQUIREMENTS, OPERATE WITHOUT INTERRUPTION,

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MEET ANY PERFORMANCE OR RELIABILITY STANDARDS OR BE ERROR FREE OR THAT ANY ERRORS OR DEFECTS CAN OR WILL BE CORRECTED. TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW IN NO EVENT WILL THYSSENKRUPP ELEVATOR OR ITS AFFILIATES, BE LIABLE TO THE CUSTOMER OR ANY THIRD PARTY FOR ANY USE, INTERRUPTION, DELAY OR INABILITY TO USE THE WEBSITE OR FOR THE ACT OF ANY THIRD PARTY INCLUDING THE INCORPORATION OF A VIRUS, SPYWARE OR ANY OTHER MALICIOUS PROGRAMS.

☐ **ThyssenKrupp Communications® (Check box if included)**

ThyssenKrupp Communications is ThyssenKrupp Elevator's 24-hour telephone monitoring and emergency call service. Our representatives are trained to handle elevator calls and they can assess the situation and quickly dispatch a technician when necessary. If needed, they can stay on the line to reassure a stranded passenger that help is on the way. ThyssenKrupp Communications maintains digital recordings and computerized records of the time, date, and location of calls received and action taken for the benefit of passengers and building owners. Special considerations regarding ThyssenKrupp Communications are set forth below.

☒ **Periodic Safety Testing (Check box if included)**

ThyssenKrupp Elevator will test your equipment in accordance with those periodic testing requirements as outlined in the American National Safety Code for Elevators and Escalators, ANSI A 17.1, which are in effect at the time this agreement is executed. In the event that the state, city or local governing authority in which the equipment is located has adopted different requirements, ThyssenKrupp Elevator will test your equipment in accordance with those periodic testing requirements in effect at the time this agreement is executed. You agree to pay for any costs of the inspector and/or inspection fees. Special Considerations regarding periodic safety testing are set forth below.

**Product Information**

You agree to provide ThyssenKrupp Elevator with current wiring diagrams that reflect all changes, parts catalogs, and maintenance instructions for the equipment covered by this agreement (exception: we will supply all of the above for new ThyssenKrupp elevators at no additional cost). You agree to authorize us 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 your property.

**Safety**

You agree 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. You agree to immediately report any condition that may indicate the need for correction before the next regular examination. You agree to immediately shut down the equipment upon manifestation of any irregularities in either the operation or the appearance of the equipment, to immediately notify us, and to keep the equipment shut down until the completion of any repairs. You agree to give us immediate verbal notice and written notice within ten (10) days after any occurrence or accident in or about the elevator. You agree to provide our personnel with a safe place to work. You agree to provide a suitable machine room, including secured doors, waterproofing, lighting, ventilation, and appropriate air temperature control to maintain that room at a temperature between 50°F and 90°F. You also agree to maintain the elevator pit in a dry condition at all times. Should water or other liquids become present, you will contract with others for removal and the proper handling of such liquids. We reserve the right to discontinue work in the building whenever, in our sole opinion, our personnel do not have a safe place to work. You also agree that if ThyssenKrupp Elevator's inspection of a piece of equipment serviced under this agreement reveals an operational problem which, in ThyssenKrupp Elevator's sole judgment, jeopardizes the safety of the riding public, ThyssenKrupp Elevator may shut down the equipment until such time as the operational problem is resolved. In that event, ThyssenKrupp Elevator will immediately advise you in writing of

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such action, the reason for such action, and whether any proposed solution is covered by the terms of this agreement.

## Other

You agree not to permit others to make alterations, additions, adjustments, or repairs or replace any component or part of the equipment during the term of this agreement. You agree to accept our judgment as to the means and methods employed by us for any corrective work under this agreement. Since ThyssenKrupp Elevator's top priority is the *satisfaction of its customers*, if you should have any concern(s) with the means and methods used to maintain or repair the equipment covered under this agreement, you agree to provide us with written notice of that concern and give us thirty (30) days to respond either in writing or commence action to appropriately resolve it.

In the event of the sale, lease or other transfer of the ownership or management of the premises in which the elevator(s) or equipment described herein are located, you agree to see that such transferee is made aware of this agreement and agrees to assume and/or be bound by the conditions hereof for the balance of the unexpired term of this agreement. Should the transferee fail to assume this agreement, you shall remain liable for all unpaid amounts, including those owed for the balance of the current unexpired term of this agreement.

~~In consideration of ThyssenKrupp Elevator performing the services herein specified, you expressly agree, to the fullest extent permitted by law, to indemnify, defend, save harmless, discharge, release and forever acquit ThyssenKrupp Elevator Corporation, our employees, officers, agents, affiliates, and subsidiaries from and against any and all claims, demands, suits, and proceedings brought against ThyssenKrupp Elevator, our employees, officers, agents, affiliates and subsidiaries for loss, property damage (including damage to the equipment which is the subject matter of this agreement), personal injury or death that are alleged to have been caused by the Purchaser or any others in connection with the presence, use, misuse, maintenance, installation, removal, manufacture, design, operation or condition of the equipment covered by this agreement, or the associated areas surrounding such equipment. Your duty to indemnify does not apply to the extent that the loss, property damage (including damage to the equipment which is the subject matter of this agreement), personal injury or death is determined to be caused by or resulting from the negligence of ThyssenKrupp Elevator and/or our employees. You recognize that your obligation to ThyssenKrupp Elevator under this clause includes payment of all attorney's fees, court costs, judgments, settlements, interest and any other expenses of litigation arising out of such claims or lawsuits.~~

## Insurance

~~You expressly agree to name ThyssenKrupp Elevator Corporation along with its officers, agents, affiliates and subsidiaries as additional insureds in your liability and any excess (umbrella) liability insurance policy(ies). Such insurance must insure ThyssenKrupp Elevator Corporation, along with its officers, agents, affiliates and subsidiaries for those claims and/or losses referenced in the above paragraph, and for claims and/or or losses arising from the sole negligence or responsibility of ThyssenKrupp Elevator Corporation and/or its officers, agents, affiliates and subsidiaries. Such insurance must specify that its coverage is primary and non-contributory. You hereby waive the right of subrogation.~~

## Items Not Covered

We do 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, swing door hinges and closing devices, sills, car flooring, floor covering, lighting fixtures, ceiling light bulbs and tubes, main line power switches, breaker(s), feeders to controller, below ground or unexposed hydraulic elevator system, including but not limited to, jack cylinder, piston, PVC or other protective material; below ground or unexposed piping, alignment of elevator guide rails, smoke and fire sensors, fire service reports, all communication and entertainment devices, security systems not installed by us, batteries for emergency lighting and emergency lowering, air conditioners, heaters, ventilation fans, pit pumps and all other items as set forth and excluded in this agreement.

## Other Conditions

Elevator Maintenance Agreement

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# Gold Service Agreement

With the passage of time, equipment technology and designs will change. If any part or component of your equipment covered under this agreement cannot, in our 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. You 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, we will not be required to make any changes or recommendations in the existing design or function of the unit(s) nor will we 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. Moreover, we shall not be obligated to service, renew, replace and/or repair the equipment due to any one or more of the following: anyone's abuse, misuse and/or vandalism of the equipment; anyone's negligence in connection with the use or operation of the equipment; any loss of power, power fluctuations, power failure, or power surges that in any way affect the operation of the equipment; fire, smoke, explosions, water, storms, wind, lightening, acts of civil or military authorities, strikes, lockouts, other labor disputes, theft, riot, civil commotion, war, malicious mischief, acts of God, or any other reason or cause beyond our control that affects the use or operation of the equipment. ~~You expressly agree to release and discharge us and our employees for any and all claims and/or losses (including personal injury, death and property damage, specifically including damage to the property which is the subject matter of this agreement) associated therewith or caused thereby. ThyssenKrupp Elevator shall also automatically receive an extension of time commensurate with any delay in performance caused by or related to the aforementioned and you expressly agree to release and discharge ThyssenKrupp Elevator from any and all claims for consequential, special or indirect damages arising out of the performance of this agreement. In no event shall ThyssenKrupp Elevator's liability for damages arising out of this agreement exceed the remaining unpaid installments of the current, unexpired term of this agreement~~

Should your system require any of the safety tests on the commencement date of this agreement, ThyssenKrupp Elevator assumes no responsibility for the day-to-day operation of the governor or safeties on traction elevators, or the hydraulic system on hydraulic elevators under the terms of this agreement until the test has been completed and the equipment passed. Should the respective system fail any of those tests, it shall be your sole responsibility to make necessary repairs and place the equipment in a condition that we deem acceptable for further coverage under the terms of this agreement. We shall not be liable for any damage to the building structure or the elevator resulting from the performance of any safety tests we perform at any time under this agreement. If during the initial firefighter's service test, that feature is found to be inoperable, you shall be responsible for all costs associated with necessary repair(s) to bring the elevator(s) into compliance with the applicable elevator codes in your local jurisdiction.

Purchaser agrees not to permit purchaser personnel or any third parties to use, access, tamper with, relocate, copy, disclose, alter, destroy, disassemble or reverse engineer the device while it is located on purchaser's premises. The installation of this equipment shall not confer any rights or operate as an assignment or license to you of any patents, copyrights or trade secrets with respect to the equipment and/or any software contained or imbedded therein or utilized in connection with the collection, monitoring and/or analysis of data.

~~In the event an Attorney is retained to enforce, construe or defend any of the terms and conditions of this agreement or to collect any monies due hereunder, either with or without litigation, the prevailing party shall be entitled to recover all costs and reasonable attorney's fees.~~

You hereby waive trial by jury. You agree that this agreement shall be construed and enforced in accordance with the laws of the state where the equipment is located. You consent to jurisdiction of the courts, both state and Federal, of the state in which the equipment is located as to all matters and disputes arising out of this agreement.

In the event any portion of this agreement is deemed invalid or unenforceable by a court of law, public policy or statute, such finding shall not affect the validity or enforceability of any other portion of this agreement.

# Gold Service Agreement

Our rights under this agreement shall be cumulative and our failure to exercise any rights given hereunder shall not operate to forfeit or waive any of said rights and any extension, indulgence or change by us in the method, mode or manner of payment or any of its other rights shall not be construed as a waiver of any of its rights under this agreement.

**MAX Considerations:** Purchaser authorizes thyssenkrupp elevator and its employees to access purchaser's premises to install, maintain and/or repair the devices and, upon termination of the service agreement, to remove the same from the premises if we elect to remove. thyssenkrupp Elevator is and shall remain the sole owner of the devices and the data communicated to us by the devices. The devices shall not become fixtures and are intended to reside where they are installed. thyssenkrupp Elevator may remove the devices and cease all data collection and analysis at any time.

If the service agreement between thyssenkrupp Elevator and Purchaser is terminated for any reason, thyssenkrupp Elevator will automatically deactivate the data collection, terminate the device software and all raw data previously received from the device will be removed and/or expunged or destroyed.

Purchaser consents to the installation of the devices in your elevators and to the collection, maintenance, use, expungement and destruction of the daily elevator data as set forth in this agreement. The devices installed by thyssenkrupp Elevator contain trade secrets belonging to us and are installed for the use and benefit of our personnel only.

Purchaser agrees not to permit purchaser personnel or any third parties to use, access, tamper with, relocate, copy, disclose, alter, destroy, disassemble or reverse engineer the device while it is located on purchaser's premises. The installation of this equipment shall not confer any rights or operate as an assignment or license to you of any patents, copyrights or trade secrets with respect to the equipment and/or any software contained or imbedded therein or utilized in connection with the collection, monitoring and/or analysis of data.

## **Price.**

The price for the services as stated in this agreement shall be Two Thousand Three Hundred Twenty Dollars (\$2,320.00) per month, excluding taxes, payable Monthly in advance.

## **Term**

~~This agreement is effective for Twenty Four (24) month(s) starting upon acceptance and is non-cancelable. To ensure continuous service, this agreement will be automatically renewed for successive Twenty Four (24) month periods, unless either party timely serves written notice upon the other party of its intention to cancel renewal at least ninety (90) days but not more than 120 days before the end of the initial Twenty Four (24) month period, or at least ninety (90) days but not more than 120 days before the end of any subsequent Twenty Four (24) month renewal period. Notice shall be sent by certified mail, return receipt requested to the address set forth on page 1 of this agreement. Time is of the essence.~~

## **Annual Price Adjustments**

Since our costs to provide you with the service set forth in this agreement may increase, we reserve the right to adjust the price of our service under this agreement accordingly. In the event this occurs, we will adjust your monthly price based on the percentage change in the average rate paid to elevator examiners. This rate paid to elevator examiners consists of the hourly rate paid to examiners plus fringe benefits and union welfare granted in place of or in addition to the hourly rate. Fringe benefits include pensions, vacations, paid holidays, group insurance, sickness and accident insurance, and hospital insurance. We also reserve the right to make additional adjustment to the price of our service under this agreement and/or enact surcharges as needed to account for increased fuel prices when such increases exceed the Consumer Price Index (CPI) current rate. We also reserve the exclusive right to make additional adjustment to the price of our service under this agreement in the event that the equipment covered by this agreement is modified from its

# Gold Service Agreement

present state.

## **Early Payment Discount**

You may elect to pay in advance for twelve (12) months of service described in this agreement. Such a pre-payment entitles you to a 3% discount from the annual price in effect at the time of payment.

## **Overdue Invoices**

A service charge of 1½% per month, or the highest legal rate, whichever is more, shall apply to all overdue accounts you have with ThyssenKrupp Elevator that are in any way related to your equipment described in this agreement. If you do not pay any sum due to ThyssenKrupp Elevator related to your equipment described in this agreement, regardless of whether it is billed pursuant to this agreement or any other with us, within sixty (60) days from the billing date, we may also choose to do one or more of the following: 1) suspend all service until all amounts due have been paid in full, and/or 2) declare all sums for the unexpired term of this agreement due immediately as liquidated damages and terminate our obligations under this agreement. If ThyssenKrupp Elevator elects to suspend service, we shall not be responsible for personal injury, death, damage to property (including damage to the equipment that is the subject matter of this agreement) or losses of any other type or kind that is in any way related the ThyssenKrupp Elevator's suspension of service. Upon resumption of service, you will be responsible for payment to ThyssenKrupp Elevator for all costs we incur that result from our suspension of service and to remedy any damage caused to your equipment during that time. Time is of the essence.

## **Special Considerations**

Pricing Structure based off GS-06F-0031N

# Gold Service Agreement

## Acceptance

Your acceptance of this agreement and its approval by an authorized manager of ThyssenKrupp Elevator will constitute exclusively and entirely the agreement for the services herein described. All other prior representations or agreements, whether written or verbal, will be deemed to be merged herein and no other changes in or additions to this agreement will be recognized unless made in writing and properly executed by both parties. Should your acceptance be in the form of a purchase order or other similar document, the provisions of this agreement will govern, even in the event of a conflict. This proposal is hereby accepted in its entirety and shall constitute the entire agreement as contemplated by you and us. This proposal is submitted for acceptance within one-hundred twenty (120) days from the Date Submitted by the ThyssenKrupp Elevator representative indicated below.

No agent or employee shall have the authority to waive or modify any of the terms of this agreement without the prior written approval of an authorized ThyssenKrupp Elevator manager.

ThyssenKrupp Elevator Corporation:	City of Santa Fe Parking:	ThyssenKrupp Elevator Corporation Approval:
<p>By: _____ (Signature of ThyssenKrupp Elevator Representative)</p> <p>Kyle Olsen Account Manager kyle.olsen@thyssenkrupp.com</p> <p>_____ (Date Submitted)</p>	<p>By: _____ (Signature of Authorized Individual)</p> <p>_____ (Print or Type Name)</p> <p>_____ (Print or Type Title)</p> <p>_____ (Date of Approval)</p>	<p>By: _____ (Signature of Authorized Individual)</p> <p>Liesje Gebler Branch Manager</p> <p>_____ (Date of Approval)</p>

# EXHIBIT B

GSD/PD (Rev. 01/11)



## State of New Mexico General Services Department

### Statewide Price Agreement

**Awarded Vendor**

0000042145

ThyssenKrupp Elevator Corp

8920 Adams St. NE Ste B

Albuquerque, NM 87113

Telephone No. (505) 858-2175

Price Agreement Number: 70-000-17-00054

Payment Terms: See Contract

F.O.B.: See Contract

Delivery: See Contract

**Ship To:**

All State of New Mexico agencies, commissions,  
institutions, political subdivisions and local public bodies  
allowed by law.

Procurement Specialist: Clarke J. Fountain

Telephone No.: (505) 827-1935

**Invoice:**

As Requested

**Title: Elevator & Escalator Preventive Maintenance and Repair**

**Term: May 8, 2017 – Jan. 30, 2023**

**This Price Agreement is made subject to the "terms and conditions" shown on the reverse side of this page, and as indicated in this Price Agreement.**

**Accepted for the State of New Mexico**

  
New Mexico State Purchasing Agent *for*

Date: 05/09/2017

Purchasing Division, 1100 St. Francis Drive, PO Box 6850, Santa Fe, NM 87502-6850 (505) 827-0472  
CF

State of New Mexico  
General Services Department  
Purchasing Division  
Price Agreement #:

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Establish a Price Agreement based on GSA Contract #GS-06F-0031N for **Elevator & Escalator Preventive Maintenance and Repair**.

This Price Agreement may be extended if the GSA Contract is extended, upon approval of all parties.

Contract orders shall be issued only to vendor(s) shown under this Price Agreement. Prices shall be equal to or less than the price stipulated under the above listed GSA Contract.

Agencies must verify that items being purchased, rented, etc., are listed on the above referenced GSA. Only those items listed may be placed on contract orders under this Price Agreement. A complete copy of the GSA catalog must be retained by the using agency for auditing purposes. Trade-ins are not allowed under this Price Agreement.

Vendors under this Price Agreement are required to furnish a complete copy of the GSA catalog to the using agency upon request. Vendors must certify upon request that only those products, supplies or services accepted by the federal government are included in GSA price list.

State and local government catalogs are not acceptable.

Note: all terms and conditions established in the referenced GSA and by the New Mexico State Purchasing Agent shall prevail.

The Contractor agrees to provide a utilization report to the agreement administrator in accordance with the following schedule:

<u>Period End</u>	<u>Report Due</u>
September 30	October 31
December 31	January 31
March 31	April 30
June 30	July 31

The periodic report shall include the gross total sales for the period subtotaled by procuring agency name. The report shall be accompanied with a check payable to the State Purchasing Division for an amount equal to three quarters of one percent (0.75%) of the total sales for the period.

This agreement is not intended to be used to procure "Open Market" items.

Item	Approx Qty	Unit	Article and Description	Unit Price
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001	1	Ea.	Elevator & Escalator Preventive Maintenance and Repair	
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\*\*\* 1 Item Total \*\*\*