

City of Santa Fe Contract  
For Elevator Rehabilitation  
At the Main Branch of the Santa Fe Public Library

THIS AGREEMENT is made and entered into by and between the City of Santa Fe, herein after referred to as the "City", and TK Elevator Corporation, a Vendor under the Statewide Price Agreement through NM GSD (New Mexico General Services Department), herein after referred to as the "Contractor."

**IT IS MUTUALLY AGREED BETWEEN THE PARTIES:**

1. **Definitions**

A. "Products and Services Schedule" refers to the complete list of products and services offered under this Agreement and the price for each. Product and service descriptions may be amended with the prior approval of the Agreement Administrator. New products and services shall not be added to the Products and Services Schedule.

B. "Business Hours" means 8:00 a.m. to 5:00 p.m. Mountain Time.

C. "You" and "your" refers to **TK Elevator Corporation**. "We," "us" or "our" refers to the City and whose accounts are created under this Agreement.

2. **Scope of Work**

A. The Contractor shall perform the following work:

Rehabilitation of the existing Staff and Public Elevators for the Main Branch of the Santa Fe Public Library. This includes, but is not limited to, refurbishing, retaining, or replacing the existing Mechanical and Electrical components of the Main Library elevators.

Work will proceed per the Modernization Proposal submitted by Modernization Sales/TK Elevator Corporation- SPA Procurement number: 70-00000-17-00054 marked "Exhibit 1" attached hereto and made a part of thereof.

The Project location is 145 Washington Avenue near the downtown Plaza.

3. **Compensation**

The City shall pay to the Contractor based upon fixed prices for each Deliverable item as listed here.

<u>Deliverable item:</u>		<u>Price</u>
01	Rehabilitation of Public and Staff Elevators	\$ 221,821.00
	NM GRT	\$ 18,716.15
	Performance and Payment Bond	\$ 3,327.00

The total compensation under this Agreement shall not exceed \$243,864.15 including New Mexico gross receipts tax (\$18,716.15).

4. **Payment Provisions**

All payments under this Agreement are subject to the following provisions.

- A. Acceptance - In accordance with Section 13-1-158 NMSA 1978, the City shall determine if the product or services provided meet specifications. Until the products or services have been accepted in writing by the City, the City shall not pay for any products or services. Unless otherwise agreed upon between the City and the Contractor, within thirty (30) days from the date the City receives written notice from the Contractor that payment is requested for services or within thirty (30) days from the receipt of products, the City shall issue a written certification (by letter or email) of complete or partial acceptance or rejection of the products or services. Unless the City gives notice of rejection within the specified time period, the products or services will be deemed to have been accepted.
- B. Payment of Invoice - Upon acceptance that the products or services have been received and accepted, payment shall be tendered to the Contractor within thirty (30) days after the date of invoice. After the thirtieth day from the date that written certification of acceptance is issued, late payment charges shall be paid on the unpaid balance due on the contract to the Contractor at the rate of 1.5 % per month. Contractor may submit invoices for payment no more frequently than monthly. Payment will be made to the Contractor's designated mailing address. Payment on each invoice shall be due within 30 days from the date of the acceptance of the invoice. The City agrees to pay in full the balance shown on each account's statement, by the due date shown on said statement.

5. **Term**

THIS AGREEMENT SHALL NOT BECOME EFFECTIVE UNTIL APPROVED IN WRITING BY THE CITY. This Agreement shall begin on date approved by the City, and end on June 30, 2023. The City reserves the right to renew the contract on an annual basis by mutual Agreement not exceed a total of four years in accordance with NMSA 1978, §§ 13-1-150 through 152.

6. **Default and Force Majeure**

The City reserves the right to cancel all or any part of any orders placed under this contract without cost to the City, if the Contractor fails to meet the provisions of this contract and, except as otherwise provided herein, to hold the Contractor liable for any excess cost occasioned by the City due to the Contractor's default. The Contractor shall not be liable for any excess costs if failure to perform the order arises out of causes beyond the control and without the fault or negligence of the Contractor; such causes include, but are not restricted to, acts of God or the public enemy, acts of the State or Federal Government, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, unusually severe weather and defaults of sub-contractors due to any of the above, unless the City shall determine that the supplies or services to be furnished by the sub-contractor were obtainable from other sources in sufficient time to permit the Contractor to meet the required delivery scheduled. The rights and remedies of the City provided in this paragraph shall not be exclusive and are in addition to any other rights now being provided by law or under this contract.

7. **Termination**

A. **Grounds.** The City may terminate this Agreement for convenience or cause. The Contractor may only terminate this Agreement based upon the City's uncured, material breach of this Agreement.

B. **Notice; City Opportunity to Cure.**

1) Except as otherwise provided in Paragraphs 7.A and 17, the City shall give Contractor written notice of termination at least thirty (30) days prior to the intended date of termination.

2) Contractor shall give City written notice of termination at least thirty (30) days prior to the intended date of termination, which notice shall (i) identify all the City's material breaches of this Agreement upon which the termination is based and (ii) state what the City must do to cure such material breaches. Contractor's notice of termination shall only be effective (i) if the City does not cure all material breaches within the thirty (30) day notice period or (ii) in the case of material breaches that cannot be cured within thirty (30) days, the City does not, within the thirty (30) day notice period, notify the Contractor of its intent to cure and begin with due diligence to cure the material breach.

3) Notwithstanding the foregoing, this Agreement may be terminated immediately upon written notice to the Contractor (i) if the Contractor becomes unable to perform the services contracted for, as determined by the City; (ii) if, during the term of this Agreement, the Contractor is suspended or debarred by the City; or (iii) the Agreement is terminated pursuant to Paragraph 17, "Appropriations", of this Agreement.

C. **Liability.** Except as otherwise expressly allowed or provided under this Agreement, the City's sole liability upon termination shall be to pay for acceptable work performed prior to the Contractor's receipt or issuance of a notice of termination; 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. *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.*

8. **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 Paragraph 7 herein, or to agree to the reduced funding.

9. **Status of Contractor**

The Contractor, and Contractor's agents and employees, are independent Contractors for the City and are not employees of the City. The Contractor, and Contractor's 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 personally reportable by the Contractor for income tax purposes, including without limitation, self-employment tax and business income tax. The Contractor agrees not to purport to bind the City unless the Contractor has written authority to do so, and then only within the strict limits of that authority.

10. **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.

11. **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.

12. **Non-Collusion**

In signing this Agreement, the Contractor/Contractor certifies the Contractor/Contractor has not, either directly or indirectly, entered into action in restraint of free competitive bidding in connection with this offer submitted to the City.

13. **Inspection of Plant**



The City may inspect, at any reasonable time during Contractor's regular business hours and upon prior written notice, the Contractor's plant or place of business, or any subcontractor's plant or place of business, which is related to the performance of this contract.

14. **Commercial Warranty**

The Contractor agrees that the tangible personal property or services furnished under this Agreement shall be covered by the most favorable commercial warranties the Contractor gives to any customer for such tangible personal property or services, and that the rights and remedies provided herein shall extend to the City and are in addition to and do not limit any rights afforded to the City by any other clause of this order. Contractor agrees not to disclaim warranties of fitness for a particular purpose or merchantability.

15. **Condition of Proposed Items**

Where tangible personal property is a part of this Agreement, all proposed items are to be NEW and of most current production, unless otherwise specified.

16. **Records and Audit**

During the term of this Agreement and for three years thereafter, the Contractor shall maintain detailed records pertaining to the services rendered and products delivered. These records shall be subject to inspection by the City, the State Auditor and other appropriate state and federal authorities. 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.

17. **Appropriations**

The terms of this Agreement, and any orders placed under it, 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 legislature, this Agreement, and any orders placed under it, shall terminate 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.

18. **Release**

The Contractor, upon final payment of the amount due under this Agreement, releases the City, its officers and employees, from all liabilities, claims and obligations whatsoever arising from or under this Agreement. 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.

19. **Confidentiality**

Any confidential information provided to or developed by 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 prior written approval by the City.

20. **Conflict of Interest**

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. The Contractor shall comply with any applicable provisions of the New Mexico Governmental Conduct Act and the New Mexico Financial Disclosures Act.

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 Paragraph 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 Paragraph 20 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 Paragraph 20 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.

21. **Approval of Contractor Representative(s)**

The City reserves the right to require a change in Contractor representative(s) if the assigned representative(s) are not, in the opinion of the City, adequately serving the needs of the City.

22. **Scope of Agreement; 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 agreements or

understandings, verbal or otherwise, of the parties or their agents shall be valid or enforceable unless embodied in this Agreement.

23. **Notice**

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 bribes, gratuities and kickbacks.

24. **Equal Opportunity Compliance**

The Contractor agrees to abide by all federal and state laws, and local Ordinances, pertaining to equal employment opportunity. In accordance with all such laws, rules, and regulations, the Contractor agrees to assure 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.

25. **Indemnification**

The Contractor shall hold the City and its employees harmless and shall indemnify the City and its employees against any and all claims, suits, actions, liabilities and costs of any kind, including attorney's fees for personal injury or damage to property arising from the acts or omissions of the Contractor, its agents, officers, employees or subcontractors. The Contractor shall not be liable for any injury or damage as a result of any negligent act or omission committed by the City, its officers or employees.

26. **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.

27. **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 NMSA 1978, § 38-3-1 (G). 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.

28. **Limitation of Liability**

The Contractor's liability to the City, for any cause whatsoever shall be limited to the purchase price paid to the Contractor for the products and services that are the subject of the City's, claim. The foregoing limitation does not apply to paragraph 25 of this Agreement or to damages resulting from personal injury caused by the Contractor's negligence.

29. **Incorporation by Reference and Precedence**

If this Agreement has been procured pursuant to a request for proposals, this Agreement is derived from (1) the request for proposal, (including any written clarifications to the request for proposals and any City response to questions); (2) the Contractor's best and final offer; and (3) the Contractor's response to the request for proposals.

In the event of a dispute under this Agreement, applicable documents will be referred to for the purpose of clarification or for additional detail in the following order of precedence: (1) amendments to the Agreement in reverse chronological order; (2) the Agreement, including the scope of work and all terms and conditions thereof; (3) the request for proposals, including attachments thereto and written responses to questions and written clarifications; (4) the Contractor's best and final offer if such has been made and accepted by the City; and (5) the Contractor's response to the request for proposals.

30. **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.

31. **Inspection**

If this contract is for the purchase of tangible personal property (goods), final inspection and acceptance shall be made at Destination. Tangible personal property rejected at Destination for non-conformance to specifications shall be removed at Contractor's risk and expense promptly after notice of rejection and shall not be allowable as billable items for payment.

32. **Inspection of Services**

If this contract is for the purchase of services, the following terms shall apply.

A. Services, as used in this Article, include services performed, workmanship, and material furnished or utilized in the performance of services.

B. The Contractor shall provide and maintain an inspection system acceptable to the City covering the services under this Agreement. Complete records of all inspection work performed by the Contractor shall be maintained and made available to the City and for as long

thereafter as the Agreement requires. The City has the right to inspect and test all services contemplated under this Agreement to the extent practicable at all times and places during the term of the Agreement. The City shall perform inspections and tests in a manner that will not unduly delay or interfere with Contractor's performance.

C. If the City performs inspections or tests on the premises of the Contractor or a subcontractor, the Contractor shall furnish, and shall require subcontractors to furnish, at no increase in contract price, all reasonable facilities and assistance for the safe and convenient performance of such inspections or tests.

D. If any part of the services do not conform with the requirements of this Agreement, the City may require the Contractor to re-perform the services in conformity with the requirements of this Agreement at no increase in contract amount. When the defects in services cannot be corrected by re-performance, the City may:

(1) require the Contractor to take necessary action(s) to ensure that future performance conforms to the requirements of this Agreement; and

(2) reduce the contract price to reflect the reduced value of the services performed.

E. If the Contractor fails to promptly re-perform the services or to take the necessary action(s) to ensure future performance in conformity with the requirements of this Agreement, the City may:

(1) by contract or otherwise, perform the services and charge to the Contractor any cost incurred by the City that is directly related to the performance of such service; or

(2) terminate the contract for default.

### 33. **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.

**A. Commercial General Liability** insurance shall be written on an occurrence basis and be as broad as ISO Form CG 00 01 with limits not less than \$2,000,000 per occurrence and \$2,000,000 in the aggregate for claims against bodily injury, personal and advertising injury, and property damage. Said policy shall include broad form Contractual Liability coverage and be endorsed to name the City of Santa Fe their officials, officers, employees, and agents as additional insureds.

**B. Business Automobile Liability** insurance for all owned, non-owned automobiles, with a combined single limit not less than \$1,000,000 per accident.

**C. Broader Coverage and Limits.** The insurance requirements under this Agreement shall be the greater of (1) the minimum coverage and limits specified in this Agreement, or (2) the broader coverage and maximum limits of coverage of any insurance policy or proceeds available to the Named Insured. It is agreed that these insurance requirements shall not in any way act to reduce coverage that is broader or that includes higher limits than the minimums required herein. No representation is made that the minimum insurance requirements of this Agreement are sufficient to cover the obligations of Contractor hereunder.



**D.** 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 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.

34. **Impracticality of Performance**

A party shall be excused from performance under this Agreement for any period that the party is prevented from performing as a result of an act of God, strike, war, civil disturbance, epidemic, or court order, provided that the party has prudently and promptly acted to take any and all steps that are within the party's control to ensure performance. Subject to this provision, such non-performance shall not be deemed a default or a ground for termination.

35. **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.

36. **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.

37. **Patent, Copyright and Trade Secret Indemnification**

A. The Contractor shall defend, at its own expense, the City against any claim that any product or service provided under this Agreement infringes any patent, copyright to trademark in the United States or Puerto Rico, and shall pay all costs, damages and attorneys' fees that a court finally awards as a result of any such claim. In addition, if any third party obtains a judgment against the City based upon Contractor's trade secret infringement relating to any product or services provided under this Agreement, the Contractor agrees to reimburse the City for all costs, attorneys' fees and amount of the judgment. To qualify for such defense and or payment, the City shall:

- 1) give the Contractor prompt written notice within 48 hours of any claim;
- 2) allow the Contractor to control the defense of settlement of the claim; and
- 3) cooperate with the Contractor in a reasonable way to facilitate the defense or settlement of the claim.

B. If any product or service becomes, or in the Contractor's opinion is likely to become the subject of a claim of infringement, the Contractor shall at its option and expense:



- 1) provide the City the right to continue using the product or service and fully indemnify the City against all claims that may arise out of the City's use of the product or service;
  - 2) replace or modify the product or service so that it becomes non-infringing;
- or,
- 3) accept the return of the product or service and refund an amount equal to the value of the returned product or service, less the unpaid portion of the purchase price and any other amounts, which are due to the Contractor. The Contractor's obligation will be void as to any product or service modified by the City to the extent such modification is the cause of the claim.

38. **Survival**

The Agreement paragraphs titled "Patent, Copyright, Trademark, and Trade Secret Indemnification; Indemnification; and Limit of Liability" shall survive the expiration of this Agreement. Software licenses, leases, maintenance and any other unexpired Agreements that were entered into under the terms and conditions of this Agreement shall survive this Agreement.

39. **Disclosure Regarding Responsibility**

A. Any prospective Contractor and any of its Principals who enter into a contract greater than sixty thousand dollars (\$60,000.00) with any City for professional services, tangible personal property, services or construction agrees to disclose whether the Contractor, or any principal of the Contractor's company is presently debarred, suspended, proposed for debarment, or declared ineligible for award of contract by any federal entity, state agency or local public body.

B. Principal, for the purpose of this disclosure, means an officer, director, owner, partner, or a person having primary management or supervisory responsibilities within a business entity or related entities.

C. The Contractor shall provide immediate written notice to the City if, at any time during the term of this Agreement, the Contractor learns that the Contractor's disclosure was at any time erroneous or became erroneous by reason of changed circumstances.

D. A disclosure that any of the items in this requirement exist will not necessarily result in termination of this Agreement. However, the disclosure will be considered in the determination of the Contractor's responsibility and ability to perform under this Agreement. Failure of the Contractor to furnish a disclosure or provide additional information as requested will be grounds for immediate termination of this Agreement pursuant to the conditions set forth in Paragraph 7 of this Agreement.

E. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render, in good faith, the disclosure required by this document. The knowledge and information of a Contractor is not required to exceed that which is the normally possessed by a prudent person in the ordinary course of business dealings.

F. The disclosure requirement provided is a material representation of fact upon which reliance was placed when making an award and is a continuing material representation of the facts during the term of this Agreement. If during the performance of the contract, the Contractor is indicted for or otherwise criminally or civilly charged by any government entity (federal, state or local) with commission of any offenses named in this document the Contractor must provide immediate written notice to the City. If it is later determined that the Contractor knowingly rendered an erroneous disclosure, in addition to other remedies available to the Government, the City may terminate the involved contract for cause. Still further the City may suspend or debar the Contractor from eligibility for future solicitations until such time as the matter is resolved to the satisfaction of the City.

40. **Suspension, Delay or Interruption of Work**

The City may, without cause, order the Contractor, in writing, to suspend, delay or interrupt the work in whole or in part for such period of time as the City may determine. The contract sum and contract time shall be adjusted for increases in cost and/or time associated with Contractor's compliance therewith. Upon receipt of such notice, Contractor shall leave the jobsite and any equipment in a safe condition prior to departing. Contractor must assert rights to additional compensation within thirty (30) days after suspension of work is lifted and return to work is authorized. Any compensation requested for which entitlement is granted and the contract sum adjusted, shall have profit included (for work completed) and for cost only (not profit) for Contractor costs incurred directly tied to the suspension itself and not otherwise covered by Contract remedy. Any change in Total Compensation must be reflected in an Amendment executed pursuant to Section 8 of this Agreement.

41. The Contractor shall not be liable for any loss, damage or delay caused by acts of government, labor troubles, strikes, lockouts, fire explosion, theft, floods, riot, civil commotion, war, malicious mischief, acts of God, or any cause beyond its control, and in no event shall the Contractor be liable for consequential damages. The Contractor shall automatically receive an extension of time commensurate with any delay regarding the aforementioned.

42. In the event of termination for convenience, the City agrees to pay the Contractor the proportional contract value of work performed including Agreement value of materials in process of fabrication, in transit, stored at the jobsite, or in the Contractor's possession. The City agrees to limit possession to work, and materials previously paid for by the City to the Contractor.

43. The Guarantee/Warranty covering parts only shall commence upon acceptance of Contractor's work by the City and shall continue for a period of one (1) year, provided that a manufacturer approved preventative maintenance program is in effect during the Guarantee/Warranty period.

44. The Contractor's obligations to indemnify, defend and hold harmless shall be limited to property damage and bodily injury claims only, and then, only to the extent of the Contractor's own acts, omissions, or negligence, and shall in no way include for the acts, omissions, or negligence of a party indemnified hereunder, or for bare allegations.

45. Additional insured coverage shall only apply to the extent any damages covered by the

policy are determined to be caused by the 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. The Contractor shall provide their standard manuscript endorsement. Any deviation from the insurance set forth in this Agreement and modified herein shall be mutually agreed to by both parties in writing prior to becoming effective. The Contractor's Certificate of Insurance only contains standard ACORD cancellation language. The waiver of subrogation shall be limited to the extent any claim is caused by the Contractor.

46. If the City materially suspends or delays the Contractor's work, prior to commencing work again, the Contractor reserves the right to survey its work, including materials stored at jobsite, and based on the Contractor's findings, the City shall execute a change order. Substantial delays to include increases in the Contractor's wage rates based on its agreement with the International Union of Elevator Constructors (IUEC), increases in material costs, as well as remobilization costs incurred by the Contractor.

Sanctions: The City has to inform the Contractor if he is, or becomes, an individual or entity that is - or that is majority owned or controlled by a party that is - included on any list of restricted parties maintained by (i) the United States of America; (ii) the United Nations; (iii) the European Union or any EU member state; (iv) the UK; or (v) any other national authority binding the Parties of this Agreement.

In case the City, or any other beneficiary of this transaction, e.g., the end-user, is or becomes an individual or entity that is - or that is majority owned or controlled by a party that is - included on any list of restricted parties, the Contractor reserves the right to cancel the Agreement immediately.

If the goods subject to this Agreement would be exported, re-exported, resold, used, transferred, or otherwise disposed of in violations of any sanctions applicable to the Contractor, the Contractor also reserves the right to cancel the Agreement immediately. In this respect, the City shall be obliged to disclose the final delivery address, end-user and end-use of the goods upon request - insofar as legally permissible - and to notify the Contractor of all circumstances that indicate an infringement.

"Sanctions" means here any economic, trade or financial sanctions, laws, regulations, embargoes, or restrictive measures imposed, enacted, administered, or enforced by any Sanctions Authority.

"Sanctions Authority" means (i) the US; (ii) the UN Security Council; (iii) the EU and any EU member state; (iv) the UK; or (v) any governmental institutions of any of the foregoing which administer Sanctions, including HM Treasury, OFAC, the US State Department and the US Department of the Treasury.

Claims of the City against the Contractor based on the termination due to these reasons shall be excluded.

Miscellaneous: The City shall issue a change order covering any additional, or any increase in, applicable taxes, tariffs, duties, permit and/or license fees imposed upon the Contractor after full execution of the Agreement between the parties by any governmental authority or by any of the Contractor's applicable component or material suppliers.

47. **Notification**

Either party may give written notice to the other party in accordance with the terms of this Paragraph. Any written notice required or permitted to be given hereunder shall be deemed to have been given on the date of delivery if delivered by personal service or hand delivery or three (3) business days after being mailed.

To the City:

Therese Martinez,  
Project Administrator  
City of Santa Fe  
2651 Siringo Road, Building E  
PO Box 909  
Santa Fe, NM 87504-0909  
505-955-5937 (O)  
tmartinez@santafenm.gov

To the Contractor:

Modernization Sales/TK Elevator  
Corporation  
Kyle Olsen  
1-505-203-9204  
TK Elevator Corporation  
P.O Box 3796  
Carol Stream, IL 60132-3796  
kyle.olsen@tkelevator.com

Either party may change its representative or address above by written notice to the other in accordance with the terms of this Paragraph. The carrier for mail delivery and notices shall be the agent of the sender.

48. **Construction Contract Performance and Payment Bond.**

a. When a construction contract is awarded in excess of twenty-five thousand dollars (\$25,000), the following bonds or security shall be delivered to the City and shall become binding on the parties upon the execution of the contract. If the Contractor fails to deliver the required performance and payment bonds, the Contractor's bid shall be rejected, its bid security shall be enforced to the extent of actual damages. Award of the contract shall be made pursuant to the Procurement Code in the following manner:

(1) a performance bond satisfactory to the City, executed by a surety company authorized to do business in this state and said surety to be approved in federal circular 570 as published by the United States treasury department or the state board of finance or the local governing authority, in an amount equal to one hundred percent of the price specified in the contract; and

(2) a payment bond satisfactory to the City, executed by a surety company authorized to do business in this state and said surety to be approved in federal circular 570 as published by the United States treasury department or the state board of finance or the local governing authority, in an amount equal to one hundred percent of the price specified in the contract, for the protection of all persons supplying labor and material to the contractor or its subcontractors for the performance of the work provided for in the contract.

b. A subcontractor shall provide a performance and payment bond on a public works building project if the subcontractor's contract for work to be performed on a project is one hundred twenty-five thousand dollars (\$125,000) or more.

49. **Succession**

This Agreement shall extend to and be binding upon the successors and assigns of the parties.

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:

CONTRACTOR:  
MODERNIZATION  
SALES/TK Elevator  
Corporation



ALAN WEBBER  
CITY MAYOR

DATE: Sep 16, 2022



ROBBIE ELROD / CONTRACT ANALYST  
CONTRACTOR

DATE: July 15, 2022  
CRS# 2017456000

Registration # 224922

ATTEST:



KRISTINE BUSTOS MIHELIC, CITY CLERK   
GB MTG 09/14/2022

CITY ATTORNEY'S OFFICE:



Marcos Martinez (Jul 13, 2022 09:54 MDT)

SENIOR ASSISTANT CITY ATTORNEY

APPROVED FOR FINANCES:



Emily K. Oster (Sep 16, 2022 16:04 MDT)

EMILY OSTER, FINANCE DIRECTOR

Main Library Elevators and Drinking Fountains/GRT18PKG/3359980 & 572500  
Org.Name/Org.#

  
AH



# Modernization Proposal



## SANTA FE PUBLIC LIBRARY

July 11, 2022

Purchaser: City of Santa Fe

Location: SANTA FE PUBLIC LIBRARY

Address: PO Box 909

Address: 145 Washington Ave

Santa Fe, NM 87504-9909

Santa Fe, NM 87501-2016

TK Elevator Corporation (hereinafter "TK Elevator") is dedicated to delivering Santa Fe Public Library (hereinafter "Purchaser") the safest, highest quality vertical transportation solutions. I am pleased to present this customized Proposal (the "Proposal") in the amount of **\$221,821.00** plus any applicable sales tax to modernize the elevator equipment described in the pages that follow at the above-referenced location.

**TOTAL PROPOSAL PRICE INCLUDING BONDS/TAXES: \$243,864.15**

Our modernization package is engineered specifically for your elevator system and will include the elevator mechanical and electrical components being replaced, refurbished or retained.

Benefits of Modernization include;

- Increased durability and reliability
- Improved fire and life safety features
- Decreased waiting times
- Reduced energy consumption
- Reduced operational cost
- Reduced troubleshooting time

This Proposal shall remain in effect for the next forty-five (45) days unless it is revoked earlier by TK Elevator in writing. The price above is subject to escalation - even after Purchaser's acceptance of this Proposal - under certain circumstances including the possibility that TK Elevator may be subjected to increased charges by its suppliers for any of the applicable materials and/or components due to the imposition of new or increased taxes, tariffs, or other charges imposed by applicable governmental authorities or the possibility that the work described in this Proposal is not completed by December 31, 2023.

In the event you have any questions regarding the content of this Proposal, please do not hesitate to contact me. We appreciate your consideration.

Sincerely,



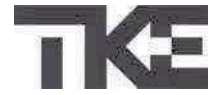
Kyle Olsen

Modernization Sales

kyle.olsen@tkelevator.com

**+1 505-203-9204**

# Modernization Proposal



## Job-Specific Clarifications for Proposal

1. Under "Work Not Included, A. Hoistways and Equipment Rooms," please note that the purchaser will be required to sign off on the special use agreement prior to providing access to the hoistway for the other tradesmen." A copy of the special use agreement will be provided upon request.
2. Overtime/Additional/Expedited work will be performed at the following rates below only after receipt of an executed change order;

SCOPE OF WORK	HOURLY RATE
Expedited Installation Hourly OT Rate (Up to 100 Team Hours)	\$281/ Team Hour
Hourly Team Rate for Out-of-Scope Work during Normal Hours	\$378/ Team Hour
Hourly Team Rate for Out-of-Scope Work during OT Hours	\$566/Team Hour
Hourly Mechanic Rate for Out-of-Scope Work during Normal Hours	\$302/ Mechanic Hour
Hourly Mechanic Rate for Out-of-Scope Work during OT Hours	\$452/ Mechanic Hour

- Rates are subject to change after 12-31-2023
  - Expenses, if applicable, are in addition to the labor rates
  - Out of scope work includes providing any required access to the hoistway for other trades (i.e. life safety, electrician, etc.).
  - See also Special Use Agreement, provided upon request.
3. Proposal is based on work completed in 2023. Labor hours performed after 12/31/2023 will be subject to a labor rate increase up to **\$6,500 for work completed after 2023.**
  4. Please be advised that this scope **includes** the work by others as mentioned in **Exhibit A**. Anything excluded from this scope will be the owner's responsibility.
  5. Under Warranty/Preventative Maintenance - The existing elevator being modernized on the Gold elevator maintenance agreement Contract #US37166 will be suspended until final acceptance of the elevator. Upon Final Acceptance of the modernized elevator, that specific elevator will be reinstated.
  6. The below will be included as part of this Modernization Proposal.

-delete all references to Thyssenkrupp Elevator Corporation and replace with TK Elevator Corporation.

-any documents not furnished hereunder shall not be binding upon Contractor until such time that Contractor is furnished with same and specifically accepts in writing.

-the following payment terms shall govern: Upon receipt of the material in TKE's local warehouse, City shall furnish Contractor with sixty-five percent (65%) of the Agreement value prior to mobilization. The remaining 35% will be progress billed as labor is applied to the job. City shall include in progress payments for materials stored at jobsite or in Contractor's possession. Should payments lag, Contractor reserves the right to demobilize until such a time that the payments have been brought up to date, and Contractor has the available manpower. City agrees to increase progress payments to ninety-five percent (95%) of contract value on or before City's acceptance of Contractor's work. City agrees to waive any and all claims to the turnover and/or use of that equipment until such time as those amounts are paid in full. Default by City in payment terms may result in suspension of work until all outstanding balances are paid. Final payment shall be made within thirty (30) days of City's acceptance of Contractor's work. notwithstanding any language therein to the contrary, any waiver or release shall be limited to lien rights for work performed and billed up to the date of the waiver or release, and the waiver or release is conditional upon receipt and clearance of the payment. Contractor otherwise reserves all other rights, claims, remedies, or defenses to which it may otherwise be entitled at law or in equity.

-Contractor (Elevator Contractor) shall not be liable for any loss, damage or delay caused by acts of

# Modernization Proposal



government, labor troubles, strikes, lockouts, fire explosion, theft, floods, riot, civil commotion, war, malicious mischief, acts of God, or any cause beyond its control, and in no event shall Contractor be liable for consequential damages. Contractor shall automatically receive an extension of time commensurate with any delay regarding the aforementioned.

- in the event of termination for convenience, City agrees to pay Contractor the proportional contract value of work performed including Agreement value of materials in process of fabrication, in transit, stored at jobsite or in Contractor's possession. City agrees to limit possession to work, and materials previously paid for by City to Contractor.

-that Guarantee/Warranty covering parts only shall commence upon acceptance of Contractor's work by City and shall continue for a period of one (1) year, provided that a manufacturer approved preventative maintenance program is in effect during the Guarantee/Warranty period.

-Contractor's obligations to indemnify, defend and hold harmless shall be limited to property damage and bodily injury claims only, and then, only to the extent of Contractor's own acts, omissions, or negligence, and shall in no way include for the acts, omissions, or negligence of a party indemnified hereunder, or for bare allegations.

-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. Delete reference to ISO form, Contractor shall provide its standard manuscript endorsement. Any deviation from the insurance set forth in the Agreement and modified herein shall be mutually agreed to by both parties in writing prior to becoming effective.

-Contractor's Certificate of Insurance only contains standard ACORD cancellation language. The waiver of subrogation shall be limited to the extent any claim is caused by Contractor.

-that if City materially suspend/delay Contractor's work, prior to commencing work again, Contractor reserves the right to survey its work (including materials stored at jobsite) and based on Contractor's findings City shall execute a change order. Substantial delays to include increases in Contractor's wage rates based on its agreement with the International Union of Elevator Constructors (IUEC), increases in material costs, as well as remobilization costs incurred by Contractor.

-bonds, if requested in writing, shall be an addition based on one percent (1%) of the contract value per annum, to be paid by City.

Sanctions: The City has to inform the Contractor if he is, or becomes, an individual or entity that is - or that is majority owned or controlled by a party that is - included on any list of restricted parties maintained by (i) the United States of America; (ii) the United Nations; (iii) the European Union or any EU member state; (iv) the UK; or (v) any other national authority binding the Parties of this Agreement.

In case the City, or any other beneficiary of this transaction, e.g., the end-user, is or becomes an individual or entity that is - or that is majority owned or controlled by a party that is - included on any list of restricted parties, the Contractor reserves the right to cancel the Agreement immediately.

If the goods subject to this Agreement would be exported, re-exported, resold, used, transferred, or otherwise disposed of in violations of any sanctions applicable to the Contractor, the Contractor also reserves the right to cancel the Agreement immediately. In this respect, the City shall be obliged to disclose the final delivery address, end-user and end-use of the goods upon request - insofar as legally permissible - and to notify the Contractor of all circumstances that indicate an aforementioned infringement.

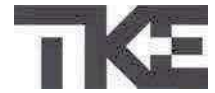
"Sanctions" means here any economic, trade or financial sanctions, laws, regulations, embargoes, or restrictive measures imposed, enacted, administered, or enforced by any Sanctions Authority.

"Sanctions Authority" means (i) the US; (ii) the UN Security Council; (iii) the EU and any EU member state; (iv) the UK; or (v) any governmental institutions of any of the foregoing which administer Sanctions, including HM Treasury, OFAC, the US State Department and the US Department of the Treasury.

Claims of the City against the Contractor based on the termination due to these reasons shall be excluded.

Miscellaneous: City shall issue a change order covering any additional (or any increase in) applicable taxes, tariffs, duties, permit and/or license fees imposed upon Contractor after full execution of the Agreement between the parties by any governmental authority or by any of Contractor's applicable component or material suppliers.

# Modernization Proposal



## SCOPE OF WORK

Grouping Name: Public

Equipment Type: Hydraulic

Speed: 115 fpm

3 Stops (3 Front /0 Rear)

Capacity: 2000 lbs.

## Units Included

Building	Nickname	OEM Serial #	TKE Serial #	Legal ID
Library	Public	409393	US95707	PENDING

## Description of Work

### Controller

- TAC 32 Controller (Includes Options listed below)
  - 24 VDC Signal Voltage
  - Auto Light and Fan Feature
  - Car Independent Service
  - Car Traveling Lantern Circuitry
  - Door Bypass Operation
  - Electronic Door Detector Interface
  - Hoistway Access and Enable
  - THY Board
- eMax Monitoring Device Provisions
- Battery Lowering in Controller
- Solid State Starters (6 or 12 leads) 208 VAC

### Power Unit

- EP-80 Power Unit (Submersible)
- 5 gallon drum of Biodegradable oil (Citgo NZ)
- 55 gallon drum of Biodegradable oil (Citgo NZ)
- 2" Shutoff Valve Kit (Pump)
- Overspeed Valve Kits for 2" (less than 150 GPM)

### Jack

- Packing

### Car

- Car Top Exit Switch
- Cab Wiring Material (200MK1)

# Modernization Proposal



## Hoistway

- HN Boxes (per each 2 cars, grouped)
- Steel Tape with Mounting hardware, Selector and magnets (terminal limits included)
- TAC 32 Field Friendly Wiring Package Includes single traveling cable, hoistway wiring, interlock wiring, interlock connectors, and serial wiring.
- Additional Hoistway Wiring for TAC 32 with Remote Machine Room
- Miscellaneous
- Miscellaneous

## Pit

- Pit Stop Switch

## Cab

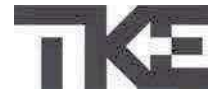
## Door Equipment

- LD-16 Plus Drive Only (FRONT)
  - includes Car Top Inspection station (w/ alarm signal)
- Micro Light (Front)

## Car Fixtures

- Main Car Station Includes Options Below
  - Applied Panel
- Debranded Car Station (No Logo)
- Vandal Resistant Floor Buttons
- Cast Braille Plates for Car Features
- Standard Key Switch Package
  - Fan
  - Light
  - Independent
  - Stop
  - Inspection/Hoistway Enable)
- Emergency Light mounted in COP
- 2004 and later Fire Service Phase II Features (includes instructions signage)
- Handicap Signal (Passing signal)
- Position Indicator (2" CE Segmented)
- ADA Phone System integral with COP (Rath)
- Speaker Pattern for Intercom System/ADA Phone
- Locked Service Cabinet
- Certificate Window
- Default Engravings
- #4 Stainless Steel Finish (441)

# Modernization Proposal



## Hall Fixtures

- Hoistway Access Switch (in Hall Station)
- Fire Service Phase I Key Switch
- Fire Service Phase I Engraved Instructions
- Fusion Hall Lanterns (Standard) White Up/Down LED's #4 S/S (304)
- Hoistway Jamb Braille (Pair of Standard) (# of Floors)
- Car Identification Plate (Pair)
- Terminal Hall Stations (Surface Mounted) with
  - Appendix O (Polycarbonate insert flame with engraved verbiage)
  - Fusion (#4 S/S (304))
- 2009 & 2010 Elevator Communications Failure add
- Terminal Hall Stations (Surface Mounted) with
  - Appendix O (Polycarbonate insert flame with engraved verbiage)
  - Fusion (#4 S/S (304))
- Intermediate Hall Stations (Surface Mounted) with
  - Appendix O (Polycarbonate insert flame with engraved verbiage)
  - Fusion (#4 S/S (304))



# Modernization Proposal



Grouping Name: Staff

Equipment Type: Hydraulic

Speed: 115 fpm

3 Stops (3 Front /0 Rear)

Capacity: 2000 lbs.

## Units Included

Building	Nickname	OEM Serial #	TKE Serial #	Legal ID
Library	Staff	409394	US95708	PENDING

## Description of Work

### Controller

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- Battery Lowering in Controller
- Solid State Starters (6 or 12 leads) 208 VAC

### Power Unit

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- 5 gallon drum of Biodegradable oil (Citgo NZ)
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- 2" Shutoff Valve Kit (Pump)
- Overspeed Valve Kits for 2" (less than 150 GPM)

### Jack

- Packing

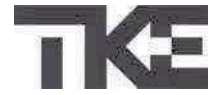
### Car

- Car Top Exit Switch
- Cab Wiring Material (200MK1)

### Hoistway

- HN Boxes (per each 2 cars, grouped)
- Steel Tape with Mounting hardware, Selector and magnets (terminal limits included)

# Modernization Proposal



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- Additional Hoistway Wiring for TAC 32 with Remote Machine Room
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- Miscellaneous

## Pit

- Pit Stop Switch

## Cab

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- LD-16 Plus Drive Only (FRONT)
  - includes Car Top Inspection station (w/ alarm signal)
- Micro Light (Front)

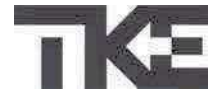
### Car Fixtures

- Main Car Station Includes Options Below
  - Applied Panel
- Debranded Car Station (No Logo)
- Vandal Resistant Floor Buttons
- Cast Braille Plates for Car Features
- Standard Key Switch Package
  - Fan
  - Light
  - Independent
  - Stop
  - Inspection/Hoistway Enable)
- Emergency Light mounted in COP
- 2004 and later Fire Service Phase II Features (includes instructions signage)
- Handicap Signal (Passing signal)
- Position Indicator (2" CE Segmented)
- ADA Phone System integral with COP (Rath)
- Speaker Pattern for Intercom System/ADA Phone
- Locked Service Cabinet
- Certificate Window
- Default Engravings
- #4 Stainless Steel Finish (441)

### Hall Fixtures

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# Modernization Proposal



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- Hoistway Jamb Braille (Pair of Standard) (# of Floors)
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- Terminal Hall Stations (Surface Mounted) with
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- Terminal Hall Stations (Surface Mounted) with
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  - Fusion (#4 S/S (304))
- Intermediate Hall Stations (Surface Mounted) with
  - Appendix O (Polycarbonate insert flame with engraved verbiage)
  - Fusion (#4 S/S (304))

## 1. Key Tasks and Approximate Lead Times

Key Tasks to be performed to be performed by Purchaser prior to equipment fabrication:

- a. Execution of this Proposal
- b. Payment for pre-production and engineering
- c. Approval of layout (if applicable)
- d. Execution of TK Elevator's Material Release Form

## Approximate Durations/Lead Times

Contract execution (can run concurrently with layout drawing package preparation and approval)	Varies
Survey and Order of Materials (additional time required for cab, signal, entrance preparation and approval, if applicable)	4 - 6 Weeks
Fabrication time (from receipt of all approvals, fully executed contract, Material Release Form and initial progress payment)	8-10 Weeks
Modernization of elevator system (Per Unit): (Upon completion of all required preparatory work by others)	3 - 5 Weeks

The durations or lead times listed above are strictly approximations that can vary due to factors both within and outside of TK Elevator's control, are subject to change without notice to Purchaser and shall not be binding on TK Elevator.

# Modernization Proposal



## 2. Payment Terms

0% of the price set forth in this Proposal as modified by options selected from the section entitled “Value Engineering Opportunities & Alternates” (if applicable) will be due and payable as an initial progress payment within 30 days from TK Elevator's receipt of a fully executed copy of this Proposal. This initial progress payment will be applied to project management, permits, engineering and shop drawings, submittals, drilling mobilization (if required) and raw material procurement. Material will be ordered once this payment is received and the parties have both executed this Proposal and the Material Release Form.

65% of the price set forth in this Proposal as modified by options selected from the section entitled “Value Engineering Opportunities & Alternates” (if applicable) shall be due and payable when the material described above has been furnished. Material is considered furnished when it has been received at the jobsite or TK Elevator staging facility. Supporting documentation of materials stored shall be limited to stored materials certificates of insurance and bills of lading. Receipt of this payment is required prior to mobilization of labor.

35% of the price set forth in this Proposal shall be made as progress payments throughout the life of the project. In the event TK Elevator fails to receive payment within thirty (30) days of the date of a corresponding invoice, TK Elevator reserves the right to demobilize until such a time that the payments have been brought up to date, and TK Elevator has the available manpower.

It is agreed that there will be no withholding of retainage from any billing and by the customer from any payment.

The payment terms breakdown above shall be considered the Schedule of Values for the project as written. Billing shall be submitted on or before the 25th day of the month according to the payment schedule above and accompanied by a form of G702-703 pay application/schedule of values and a conditional waiver, the format of which is hereby acknowledged and accepted.

The use of online Portals for the submission of billing shall follow the terms of the Proposal and Customer agrees to permit billing in accordance with the executed contract terms. Portal access and usage is to be provided free of additional charge to TK Elevator and any additional cost for such use is to be reimbursed to TK Elevator via a reimbursable change order immediately upon acceptance.

Purchaser agrees that TK Elevator shall have no obligation to complete any steps necessary to provide Purchaser with full use and operation of the installed equipment until such time as TK Elevator has been paid 100% both of the price reflected in this Proposal and for any other work performed by TK Elevator or its subcontractors in furtherance of this Proposal. Purchaser agrees to waive any and all claims to the turnover and/or use of that equipment until such time as those amounts are paid in full.

# Modernization Proposal



Proposal price:		\$221,821.00
Estimated tax:	8.4400	\$18,716.15
Estimated contract price:		\$243,864.15 (incl. taxes/bonds)
Payment - Performance Bond:		\$3,327.00

### 3. Warranty

TK Elevator warrants any equipment it installs as described in this Proposal against defects in material and workmanship for a period of one (1) year from the date of Purchaser's execution of TK Elevator's "Final Acceptance Form" on the express conditions that all payments made under this Proposal and any mutually agreed-to change orders have been made in full and that such equipment is currently being serviced by TK Elevator. In the event that TK Elevator's work is delayed for a period greater than six (6) months, the warranty shall be reduced by the amount of the delay. This warranty is in lieu of any other warranty or liability for defects. TK Elevator makes no warranty of merchantability and no warranties which extend beyond the description in this Proposal, nor are there any other warranties, expressed or implied, by operation of law or otherwise. Like any piece of fine machinery, the equipment described in this Proposal should be periodically inspected, lubricated, and adjusted by competent personnel. This warranty is not intended to supplant normal maintenance service and shall not be construed to mean that TK Elevator will provide free service for periodic examination, lubrication, or adjustment, nor will TK Elevator correct, without a charge, breakage, maladjustments, or other trouble arising from normal wear and tear or abuse, misuse, improper or inadequate maintenance, or any other causes other than defective material or workmanship. In order to make a warranty claim, Purchaser must give TK Elevator prompt written notice at the address listed on the cover page of this Proposal and provided all payments due under the terms of this Proposal and any mutually agreed to written change orders have been made in full, TK Elevator shall, at its own expense, correct any proven defect by repair or replacement. TK Elevator will not, under any circumstances, reimburse Purchaser for cost of work done by others, nor shall TK Elevator be responsible for the performance of any equipment that has been the subject of service, repair, replacement, revisions or alterations by others. If there is more than one (1) unit which is the subject of work described in this Proposal, this section shall apply separately to each unit as accepted.

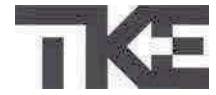
### 4. Preventative Maintenance Program

This Proposal does not include any maintenance, service, repair or replacement of the equipment or any other work not expressly described herein. TK Elevator will submit a separate proposal to Purchaser covering the maintenance and repair of this equipment to be supplied to Purchaser at an additional cost.

### 5. Work Not Included

There are certain items that are not included in this Proposal, many of which must be completed by Purchaser prior to and as a condition precedent to TK Elevator's performance of its work as described in this Proposal. In order to ensure a successful completion of this project, it shall be solely Purchaser's responsibility to coordinate its own completion of those items with TK Elevator. The following is a list of those items that are not included in this Proposal:

# Modernization Proposal



## A. Hoistways and Equipment Rooms

### 1. Purchaser shall provide the following:

- a. A dry legal hoistway, properly framed and enclosed, and including a pit of proper depth and overhead. This is to include steel safety beam, inspection or access platforms, access doors, sump pump, lights, waterproofing and venting as required; dewatering of pit(s) and required permanent screening/
- b. A legal machine/control room, adequate for the elevator equipment, including floors, trap doors, gratings, access platforms, ladders, railings, foundations, lighting, ventilation sized per the TK Elevator shop drawings. Purchaser must maintain machine/control room temperature between 55 and 90 degrees Fahrenheit, with relative humidity less than 95% non-condensing at all times.
- c. Adequate bracing of entrance frames to prevent distortion during wall construction.
- d. All grouting, fire caulking, cutting, x-ray and removal of walls and floors, patching, coring, setting of sleeves/knockouts, penetrations and painting (except as specified) and removal of obstructions required for elevator work; along with all proper trenching and backfilling for any underground piping and/or conduit.
- e. All labor and materials necessary to support the full width of the hoistway at each landing for anchoring or welding TK Elevator sill supports, steel angles, sill recesses;
- f. The furnishing, installing and maintaining of the required fire rating of elevator hoistway walls, including the penetration of firewall by elevator fixture boxes;
- g. Ensuring that the elevator hoistways and pits are dewatered, cleaned and properly waterproofed;

## B. Electrical and Life Safety:

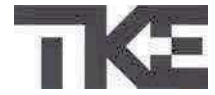
### 1. Purchaser shall provide a dedicated, analog telephone or data line to the elevator telephone or communication device; one additional data line per group of elevators for diagnostic capability wired to designated controller;

### 2. Purchaser shall provide the following:

- a. suitable connections from the power main to each controller and signal equipment feeders as required, including necessary circuit breakers and fused mainline disconnect switches per N.E.C. prior to installation. Suitable power supply capable of operating the new elevator equipment under all conditions;
- b. piping and wiring to controller for mainline power, car lighting, and any other building systems that interface with the elevator controls per N.E.C. Articles 620-22 and 620-51;
- c. any required hoistway / wellway, machine room, pit lighting and/or 110v service outlets;
- d. conduit and wiring for remote panels to the elevator machine room(s) and between panels. Remote panels required by local jurisdictions are not included in this proposal;
- e. a bonded ground wire, properly sized, from the elevator controller(s) to the primary building ground; and all remote wiring to the outside alarm bell as requested by all applicable code provisions;
- f. installed sprinklers, smoke/heat detectors on each floor, machine room and hoistways / wellways, shunt trip devices (not self-resetting) and access panels as may be required as well as normally open dry contacts for smoke/heat sensors, which shall be terminated by Purchaser at a properly marked terminal in the elevator controller;
- g. a means to automatically disconnect the main line and the emergency power supply to the elevator prior to the application of water in the elevator machine room that shall not be self-resetting;
- h. emergency power supply including automatic time delay transfer switch and auxiliary contacts with wiring to the designated elevator controller and along with electrical cross connections between elevator machine rooms for emergency power purposes;
- i. the following emergency power provisions are not included: interface in controller, pre-testing and testing, emergency power keyswitches;



# Modernization Proposal



j. emergency power operation is included as part of the design of the elevator control system and based on each car in the group only, to properly sequence, one at a time to the programmed landing, and park. The design requires that the generator, transfer switch, and related circuitry are sufficient to run this function or any other function for any building other system that is associated with this project. In the event that the generator, transfer switch, and related circuitry are not sufficient, TK Elevator will provide Purchaser with a written change order for Purchaser's execution.

k. a dry set of contacts which close 20 seconds prior to the transfer from normal power to emergency power or from emergency power to normal power whether in test mode or normal operating conditions in the event that an emergency power supply will be provided for the elevator;

l. confirmation that the emergency standby power generator and/or building can accept the power generated to and from the elevator during both Hi-Speed and Deceleration. In cases where the generator and/or building load is not electrically sized to handle the power return from the regen drive, additional separate chopper and resistor units are available for purchase but not included in this proposal. The additional chopper and resistor units allow regenerated power to be dissipated in the resistor bank and not sent back into the building grid.

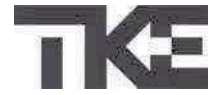
## C. Miscellaneous:

1. Purchaser shall provide all work relating to the finished cab flooring including, but not limited to, the provision of materials and its installation to comply with all applicable codes;
2. Hydraulic jack replacement:
  - a. the excavation of the elevator cylinder well hole in the event drilling is necessary through soil that is not free from rock, sand, water, building construction members and obstructions. Should obstructions be encountered, TK Elevator will proceed only after written authorization has been received from the Purchaser. The contract price shall be increased by the amount of additional labor at TK Elevator's standard labor rates as per the local office along with any additional expenses and materials required;
  - b. adequate ingress and egress, including ramping, for rail-mounted or truck-mounted drill rig;
  - c. Purchaser is responsible for pumping truck contractor to remove and dispose of spoils from the site. In the event that unforeseen and unfavorable below ground conditions are encountered, including but not limited to concrete around the cylinder, construction debris, adverse water and/or soil conditions, erosion, cavitations, oil contamination, or circumstances necessitating increased hole depth, etc., which require the employment of specialized contractors, TK Elevator shall immediately advise the Purchaser and costs will be extra to the contract;
  - d. in ground protection systems other than TK Elevator's standard HDPE or PVC protection system with bottomless corrugated steel casing;
  - e. any required trenching and backfilling for underground piping or casings, and conduit as well as any compaction, grouting, and waterproofing of block-out;
  - f. engineering, provision and installation of methane barriers or coordination/access;
  - g. access to 2" pressurized water supply within 100'-0" of the jack hole location;
  - h. a safe, accessible storage area for placement of D.O.T. 55 gallon containers for the purpose of spoils containment; obtaining of local environmental or disposal permits
  - i. any spoils or water testing;

## 6. Working Hours, Logistics and Mobilization

- a. All work described in this Proposal shall be performed during TK Elevator's regular working days – defined as Monday thru Friday and excluding IUEC recognized holidays – and regular working hours – defined as those hours regularly worked by TK Elevator modernization mechanics at the TK Elevator branch office that will provide labor associated with the performance of the work described in this Proposal - unless otherwise specified

# Modernization Proposal



and agreed to in writing by both TK Elevator and Purchaser (hereinafter TK Elevator's regular working days and regular working hours shall be collectively defined as "normal working hours"). TK Elevator shall be provided with uninterrupted access to the elevator hoistway and machine room areas to perform work during normal working hours.

- b. Purchaser shall provide on-site parking to all TK Elevator personnel at no additional cost to TK Elevator.
- c. Purchaser shall provide traffic control, lane closures, permits and flagmen to allow suitable access/unload of tractor trailer(s).
- d. Purchaser agrees to provide unobstructed tractor-trailer access and roll-able access from the unloading area to the elevator or escalator hoistways or wellways (as applicable).
- e. Purchaser will be required to sign off on the Material Release Form, which will indicate the requested delivery date of equipment to the site. If Purchaser is not ready to accept delivery of the equipment within ten (10) business days of the agreed upon date, Purchaser will immediately make payments due for equipment and designate an area adjacent to the elevator shaft where Purchaser will accept delivery. If Purchaser fails to provide this location or a mutually agreeable alternative, TK Elevator is authorized to warehouse the equipment at the TK Elevator warehouse or designated distribution facility at Purchaser's risk and expense. Purchaser shall reimburse TK Elevator for all costs due to extra handling and warehousing. Storage beyond ten (10) business days will be assessed at a rate of \$100.00 per calendar day for each unit listed in this Proposal, which covers storage and insurance of the elevator equipment and is payable prior to delivery.
- f. Purchaser agrees to provide a dry and secure area adjacent to the hoistway(s) at the ground level for storage of the elevator equipment and tools within ten (10) business days from receipt at the local TK Elevator warehouse. Any warranties provided by TK Elevator for vertical transportation equipment will become null and void if equipment is stored in any manner other than a dry, enclosed building structure. Any relocation of the equipment as directed by Purchaser after initial delivery will be at Purchaser's expense.
- g. TK Elevator includes one mobilization to the jobsite. A mobilization fee of \$2,500.00 per crew per occurrence will be charged for pulling off the job or for any delays caused by others once material has been delivered and TK Elevator's work has commenced.
- h. Access for this project shall be free and clear of any obstructions. A forklift for unloading and staging material shall also be provided by Purchaser at no additional cost.
- i. Purchaser shall provide an on-site dumpster. TK Elevator will be responsible for cleanup of elevator/escalator packaging material; however, composite cleanup participation is not included in this Proposal.
- j. The hiring of a disposal company which MUST be discussed prior to any material being ordered or work being scheduled. TK Elevator will provide environmental services ONLY if this is specifically included under the "Scope of Work" section above. TK Elevator assumes no responsibility and/or liability in any way whatsoever for spoils or other contamination that may be present as a result of the cylinder breach and/or other conditions present on the work site.
- k. One or more of the units described in this Proposal will be out of service and unavailable to move passengers and/or property during entire duration of the performance of the work described in this Proposal until re-certified by the applicable authority(ies) having jurisdiction and in good standing with payment schedules.

## 7. Temporary Use, Inspection and Turnover

- a. Unless required by specification, TK Elevator will not provide for "temporary use" of the elevator(s) described in this Proposal prior to completion and acceptance of the complete installation. Temporary use shall be agreed to via a change order to this Proposal which shall require Purchaser's execution of TK Elevator's standard Temporary Use Agreement. Cost for temporary use of an elevator shall be \$200.00 per calendar day per hydraulic elevator and \$250.00 per calendar day for each traction elevator for rental use only, excluding personnel to operate. All labor and parts, including callbacks required during the temporary use period will be

# Modernization Proposal



billed at TK Elevator's standard local billing rates. In the event that an elevator must be provided for temporary use, TK Elevator will require 30 days to perform final adjustments and re-inspection after the elevator has been returned to TK Elevator with all protection, intercoms and temporary signage removed. This duration does not include any provisions for finish work or for repairs of same, which shall be addressed on a project-by-project basis. Cost for preparation of controls for temporary use, refurbishment due to normal wear and tear, readjustment and re-inspection is \$3,500.00 per elevator up to 10 floors. For projects above 10 stops, an additional cost of \$1,500.00 / 10 floors shall apply. These costs are based on work performed during normal working hours. Temporary use excludes vandalism or misuse. Any required signage, communication devices, elevator operators, and protection are not included while temporary use is being provided. All overtime premiums for repairs during the temporary use period will be billed at TK Elevator's local service billing rates.

b. The Proposal price set forth above includes one (1) inspection per unit by the applicable authority having jurisdiction if required by the government of the locality where the equipment is located. In the event the equipment fails that inspection due to no fault of TK Elevator, TK Elevator will charge Purchaser for both the cost of each re-inspection which shall be \$1,500.00 and a remobilization fee which shall be \$2,500.00 via change order prior to scheduling a re-inspection.

c. Upon notice from TK Elevator that the installation and/or modernization of the equipment is complete, Purchaser will arrange to have present at the jobsite a person authorized to make the final inspection and to execute TK Elevator's "Final Acceptance Form." The date and time that such person will be present at the site shall be mutually agreed upon but shall not be more than ten (10) business days after the date of TK Elevator's notice of completion to Purchaser unless both TK Elevator and Purchaser agree to an extension of that ten (10) day period in writing. Such final inspection and execution of TK Elevator's "Final Acceptance Form" shall not be unreasonably delayed or withheld.

d. Should the Purchaser or the local authority having jurisdiction require TK Elevator's presence at the inspection of equipment installed by others in conjunction with the work described in this Proposal, Purchaser agrees to compensate TK Elevator for its time at TK Elevator's current billing rate as posted at its local office.

e. At the conclusion of its work, TK Elevator will remove all equipment and unused or removed materials from the project site and leave its work area in a condition that, in TK Elevator's sole opinion, is neat and clean.

f. Purchaser agrees to accept a live demonstration of equipment's owner-controlled features in lieu of any maintenance training required in the bid specifications.

g. Purchaser agrees to accept TK Elevator's standard owner's manual in lieu of any maintenance, or any other, manual(s) required in the bid specifications.

## 8. MAX

MAX is a cloud based Internet of Things (IoT) platform that we, at our election, may connect to your elevators and escalators by means of installation of a remote-monitoring device or modem (each a "device"). MAX will analyze the unique signal output of your equipment 24/7 and when existing or potential outages are identified, MAX will automatically communicate with our dispatch centers. When appropriate, the dispatch center will alert our technicians during normal working hours. These MAX alerts provide the technician with precise diagnostics detail, which greatly enhances our ability to fix your equipment right the first time, MAXimizing the equipment uptime.

a. Purchaser authorizes TK 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.

b. TK 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. TK Elevator may remove the devices and cease all data collection and analysis at any time.

# Modernization Proposal



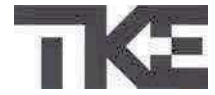
- c. If the service agreement between TK Elevator and Purchaser is terminated for any reason, TK Elevator will automatically deactivate the data collection, terminate the device software and all raw data previously received from the device will be removed and/or expunged or destroyed.
- d. Purchaser 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.
- e. The devices installed by TK Elevator contain trade secrets belonging to us and are installed for the use and benefit of our personnel only.
- f. 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.
- g. 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.

## 9. Additional Terms and Conditions

- a. In no event shall TK Elevator be responsible for liquidated, consequential, indirect, incidental, exemplary, and special damages associated with the work described in this Proposal.
- b. This Proposal is made without regard to compliance with any special purchasing, manufacturing or construction/installation requirements including, but not limited to, any socio-economic programs, such as small business programs, minority or woman owned business enterprise programs, or local preferences, any restrictive sourcing programs, such as Buy American Act, or any other similar local, state or federal procurement regulations or laws that would affect the cost of performance. Should any such requirements be applicable to the work described in this Proposal, TK Elevator reserves the right to modify this Proposal or rescind it altogether.
- c. TK Elevator is an equal opportunity employer.
- d. TK Elevator's performance of the work described in this Proposal is contingent upon Purchaser furnishing TK Elevator with any and all necessary permission or priority required under the terms and conditions of government regulations affecting the acceptance of this Proposal or the manufacture, delivery or installation of the equipment. All applicable sales and use taxes, permit fees and licenses imposed upon TK Elevator as of the date of the Proposal are included in the price of the Proposal. Purchaser is responsible for any additional applicable sales and use taxes, permit fees and licenses imposed upon TK Elevator after the date of the Proposal or as a result of any law enacted after the date of the Proposal.
- e. All taxes, tariffs, duties, permit and/or license fees imposed upon TK Elevator as of the date of the execution of this Proposal are included in the price of the Proposal. Purchaser is responsible, in addition to the Proposal price, to pay TK Elevator for any additional (or any increase in) applicable taxes, tariffs, duties, permit and/or license fees imposed upon TK Elevator after the date of acceptance of this Proposal by any governmental authority or by any of TK Elevator's suppliers of the materials and/or components required in connection with this Proposal.
- f. Purchaser agrees to provide TK Elevator's personnel with a safe place in which to work and TK Elevator reserves the right to discontinue work at the jobsite whenever, in TK Elevator's sole opinion, this provision is being violated.
- g. The pricing set forth in this Proposal assumes that the elevator pits will not be classified as a confined space. TK Elevator will follow its standard safety policy and procedures. Any job specific safety requirements over and above TK Elevator's standard practices and policies may require additional costs.
- h. TK Elevator will furnish and install all equipment in accordance with the terms, conditions, scope and equipment nomenclature as noted herein. Requested changes or modifications to such provisions will require a



# Modernization Proposal



written change order issued on the Purchaser's letterhead and accepted by TK Elevator in writing prior to the execution of such work. This change order shall detail the current contract price, the amount of the change, and new contract value.

i. This Proposal does not include a schedule for the work described and any such schedule shall be mutually agreed upon by an authorized representative of both TK Elevator and Purchaser in writing before becoming effective.

j. In the event asbestos material is knowingly or unknowingly removed or disturbed in any manner at the jobsite, Purchaser shall monitor TK Elevator's work place and prior to and during TK Elevator's manning of the job, Purchaser shall certify that asbestos in the environment does not exceed .01 fibers per cc as tested by NIOSH 7400.

k. TK Elevator retains title to and a security interest in all equipment it supplies – which TK Elevator and Purchaser agree can be removed without material injury to the real property – until all payments including deferred payments and any extensions thereof, are made. In the event of any default by Purchaser on any payment, or any other provision of this Proposal, TK Elevator may take immediate possession of the equipment and enter upon the premises where it is located – without legal process – and remove such equipment or portions thereof, irrespective of the matter of its attachment to the real estate or the sale, mortgage or lease of the real estate. Pursuant to the Uniform Commercial Code, and at TK Elevator's request, Purchaser agrees to execute any financial or continuation statements which may be necessary for TK Elevator to file in public offices in order to perfect TK Elevator's security interest in such equipment.

l. TK Elevator reserves the right to assign payments owed to TK Elevator under this Proposal.

m. TK Elevator shall not be liable for any loss, damage or delay caused by acts of government, labor troubles, strikes, lockouts, fire, explosion, theft, floods, riot, civil commotion, war, malicious mischief, acts of God or any cause beyond its control.

n. The rights of TK Elevator under this Proposal shall be cumulative and the failure on the part of the TK Elevator to exercise any rights hereunder shall not operate to forfeit or waive any of said rights. Any extension, indulgence or change by TK Elevator in the method, mode or manner or payment or any of its other rights shall not be construed as a waiver of any of its rights under this Proposal.

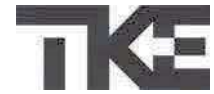
n.

o. TK Elevator can furnish Certificate of Workers' Compensation, Bodily Injury and Property Damage Liability Insurance coverage to Purchaser upon written request.

p. Should loss of or damage to TK Elevator's material, tools or work occur at the project site, Purchaser shall compensate TK Elevator for such loss, unless such loss or damage results from TK Elevator's own acts or omissions.

r.

# Modernization Proposal



S.

t. TK Elevator's participation in any controlled insurance program is expressly conditioned upon review and approval of all controlled insurance program information and documentation prior to enrollment. Any insurance credits if applicable, will be provided at that time.

u. Unless so mutually agreed upon in a separate signed agreement, TK Elevator shall not be required to interact or correspond with any third party with whom Subcontractor is not in privity of contract concerning matters pertinent to this Agreement.

v. The Purchaser must inform TK Elevator if Purchaser is, or becomes, an individual or entity that is - or that is majority owned or controlled by a party that is - included on any list of restricted parties maintained by (i) the United States of America; (ii) the United Nations; (iii) the European Union or any EU member state; (iv) the UK; or

(v) any other national authority binding the parties of this contract.

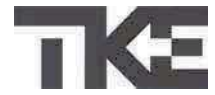
In case the Purchaser, or any other beneficiary of this transaction, e.g. the end-user, is or becomes an individual or entity that is - or that is majority owned or controlled by a party that is - included on any list of restricted parties, TK Elevator reserves the right to cancel this Proposal immediately.

If the goods subject to this Proposal would be exported, re-exported, resold, used, transferred or otherwise disposed of in violation of any sanctions applicable to TK Elevator, TK Elevator also reserves the right to cancel this Proposal immediately. In this respect, the Purchaser shall be obliged to disclose the final delivery address, end-user and end-use of the goods upon request - insofar as legally permissible - and to notify TK Elevator of all circumstances that indicate an aforementioned infringement.

"Sanctions" means here any economic, trade or financial sanctions, laws, regulations, embargoes or restrictive measures imposed, enacted, administered or enforced by any Sanctions Authority. "Sanctions Authority" means (i) the US; (ii) the UN Security Council; (iii) the EU and any EU member state; (iv) the UK; or (v) any governmental institutions of any of the foregoing which administer Sanctions, including HM Treasury, OFAC, the US State Department and the US Department of the Treasury.



# Modernization Proposal



## Acceptance

Purchaser's acceptance of this Proposal and its approval by an authorized manager of TK Elevator will constitute exclusively and entirely the agreement between the parties for the goods and services herein described and full payment of the sum of Two Hundred Twenty One Thousand Eight Hundred Twenty One Dollars (\$221,821.00) plus any applicable sales tax.

All other prior representations or regarding this work, whether written or verbal, will be deemed to be merged herein and no other changes in or additions to this Proposal will be recognized unless made in writing and properly executed by both parties as a change order. Should Purchaser's acceptance be in the form of a purchase order or other similar document, the provisions of this Proposal will exclusively govern the relationship of the parties with respect to this transaction. No agent or employee shall have the authority to waive or modify any of the terms of this Proposal without the prior written approval of an authorized TK Elevator manager.

Santa Fe Public Library  
(Purchaser):

TK Elevator Corporation Management Approval

By:

(Signature of Authorized Individual)

(Print or Type Name)

(Print or Type Title)

(Date of Acceptance)

By:

(Signature of Branch Representative)

Liesje Gebler  
Branch Manager

(Date of Execution)



SCHEDULING AND PRODUCTION  
REQUEST FOR PAYMENT

Please Remit To: TK Elevator  
PO Box 3796  
Carol Stream, IL 60132-3796

Date	Terms	Reference ID	Customer Reference # / PO
July 11, 2022	Immediate	ACIA-1SPH4CR	
Total Contract Price:			\$221,821.00
Estimated Tax:			8.4400 \$18,716.15
Estimated Invoice Amount (Incl. of taxes/bonds)			\$243,864.15

For inquiries regarding your contract or services provided by TK Elevator, please contact your local account manager at +1 505 8565800. To make a payment by phone, please call 678-424-5640 with the reference information provided below.

Current and former service customers can now pay online at:  
<https://secure.billtrust.com/thyssenkruppelevator/ig/one-time-payment>

Thank you for choosing TK Elevator. We appreciate your business.

**Please detach the below section and provide along with payment.**

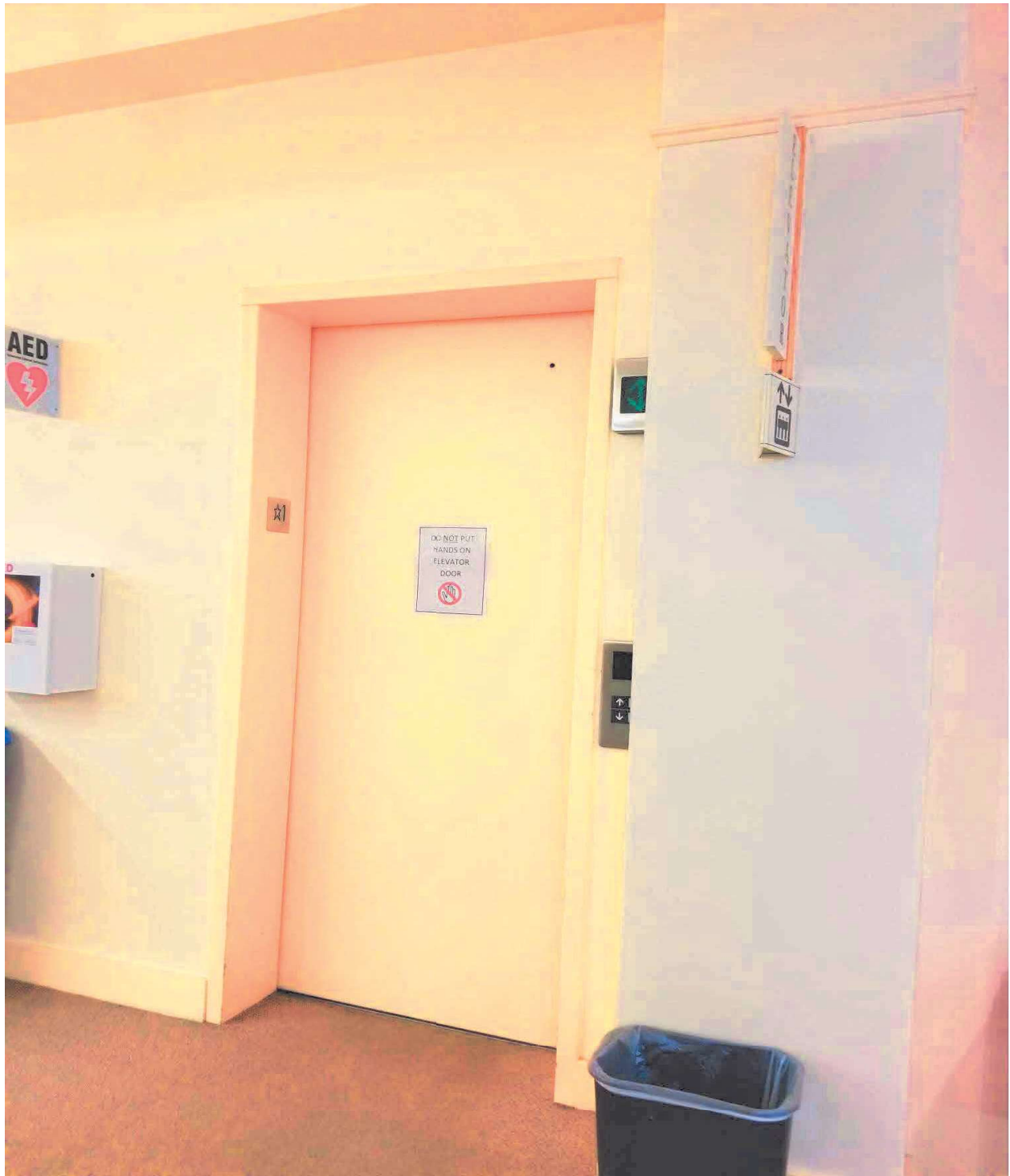
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Customer Name:	Santa Fe Public Library	Remit To:
Location Name:	SANTA FE PUBLIC LIBRARY	TK Elevator
Customer Number:	65229	PO Box 3796
Quote Number:	2020-2-1002518	Carol Stream, IL 60132-3796
Reference ID:	ACIA-1SPH4CR	



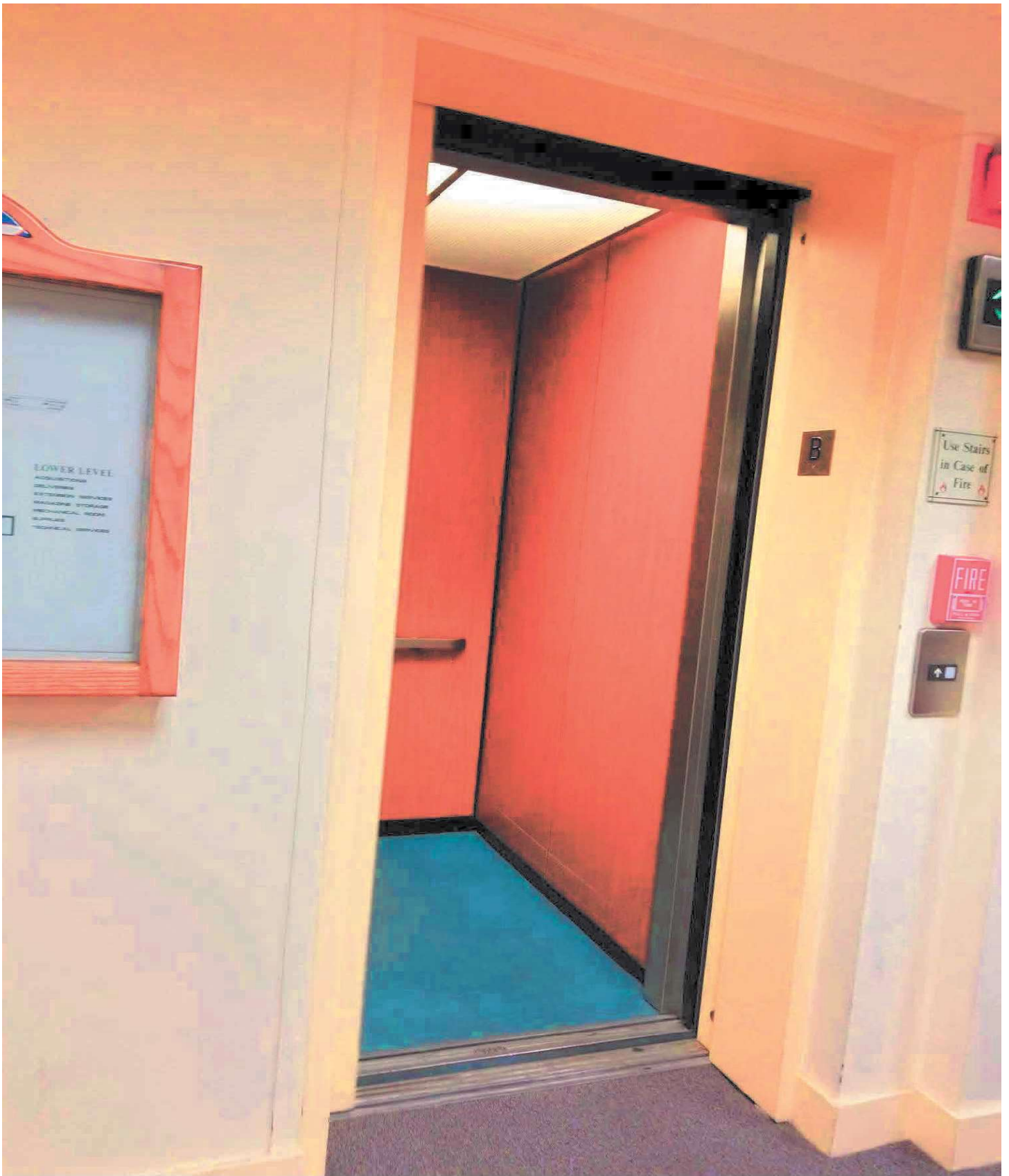
# Santa Fe Public Library

## Main Branch

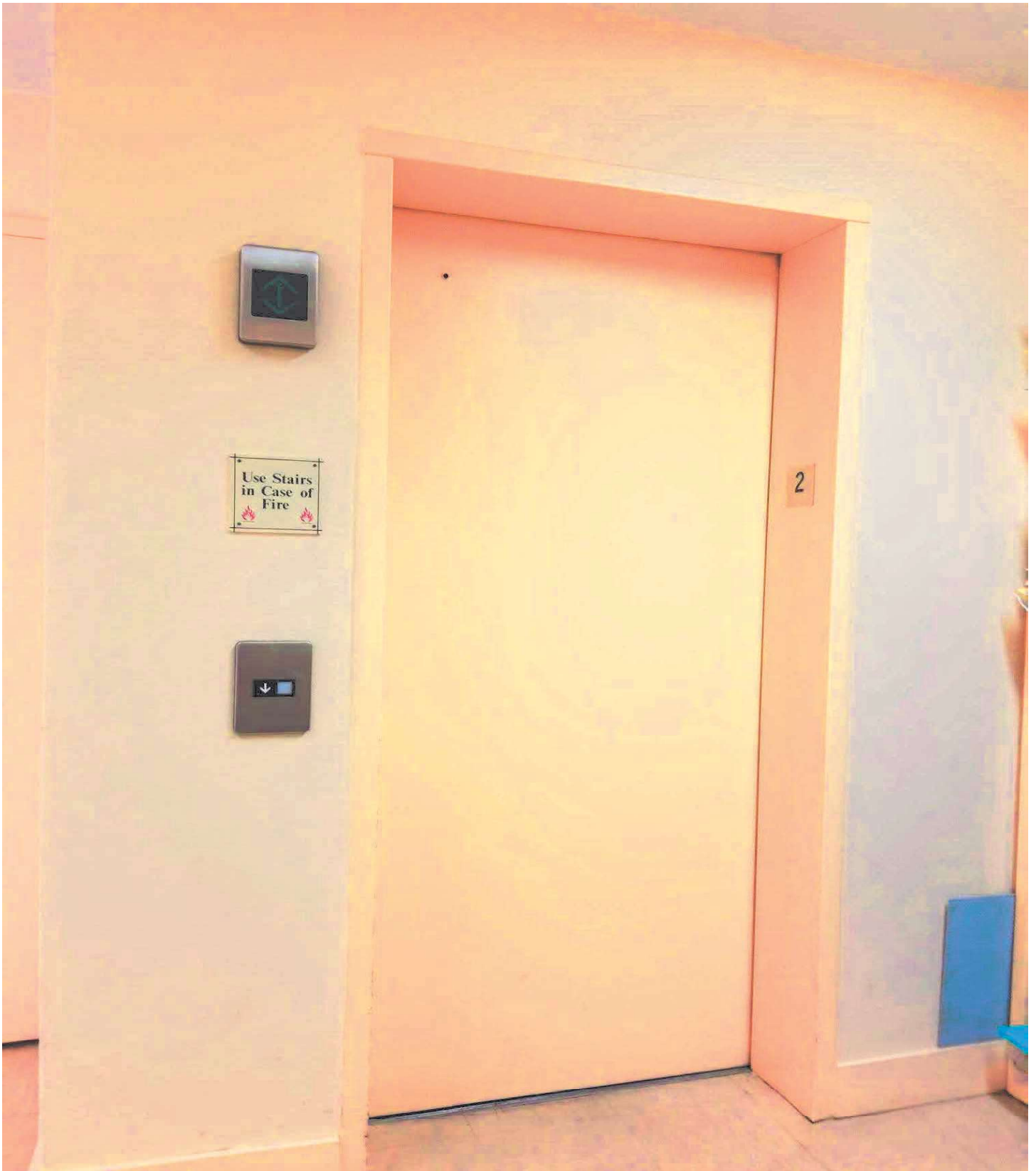


Current Public Elevator-Exterior



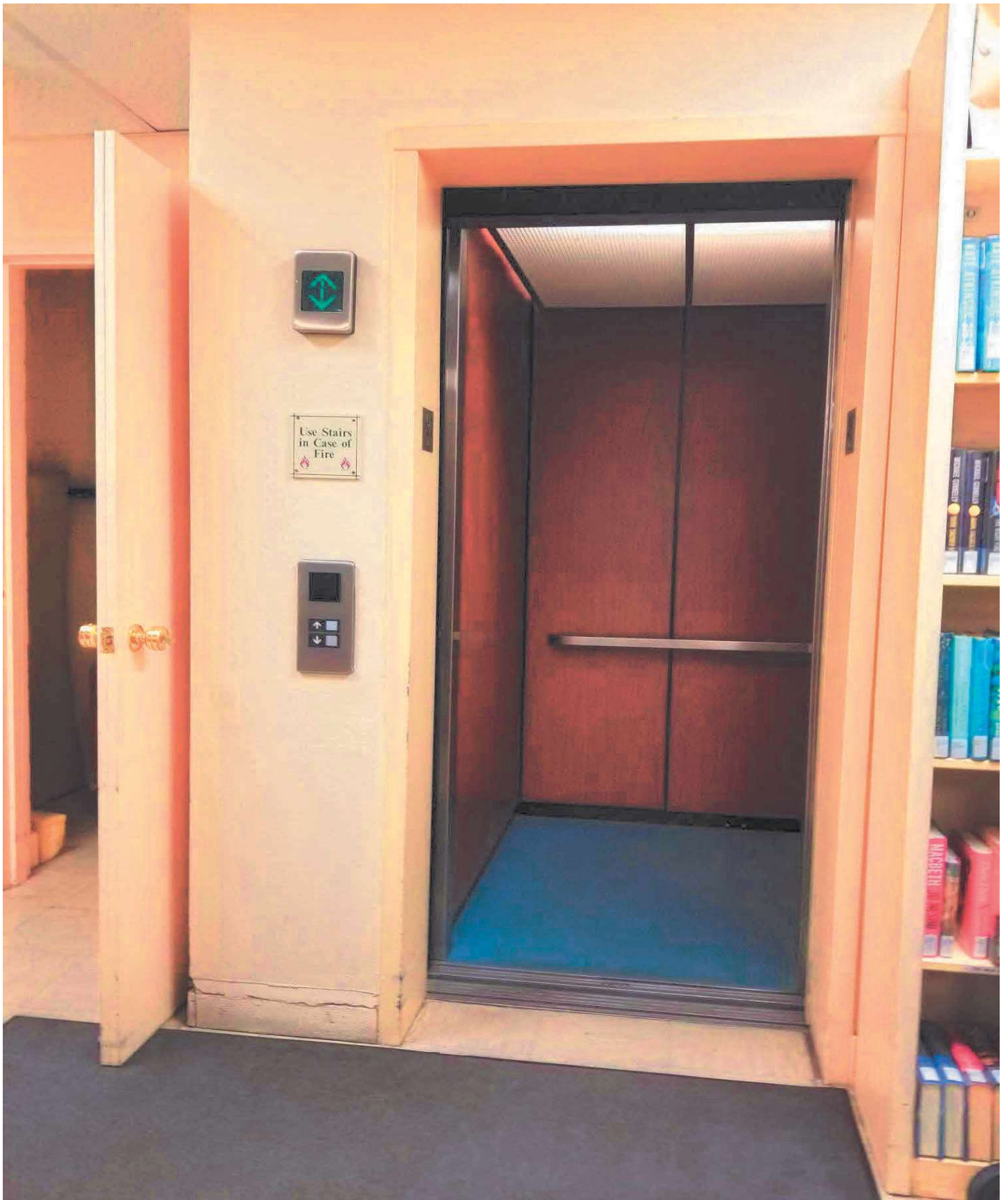


Current Public Elevator-Interior



Current Staff Elevator-Exterior





Current Staff Elevator-Interior