

## ADDENDUM (1) TO THYSSENKRUPP AGREEMENT

THIS ADDENDUM ONE (1) by and between the City of Galveston, a municipality incorporated under the laws of the State of Texas, Galveston Texas, and Contractor, **Thyssenkrupp Elevator Corporation (Thyssenkrupp)** located 11011 Brooklet STE 360, TX 77099, is entered into on this 19 day of January 2018.

**WHEREAS**, The City of Galveston and Thyssenkrupp have entered into an agreement for maintaining elevator equipment located at Scholes Field Airport. The details of the Agreement are provided in that document, as modified, and attached and is incorporated herein for all intents and purposes.

**WHEREAS**, the City and Thyssenkrupp agree to make the following provisions part of the Agreement.

1. The obligations of the City to continue the Agreement with Thyssenkrupp are subject to appropriation by the City of funds that are lawfully available to be applied to such purpose. In the event that the City fails to appropriate funds for the Agreement, the City or Thyssenkrupp may terminate the Agreement effective as of the end of City's then current fiscal year.
2. The original term of the Agreement shall be for 12 months with the option to extend the Agreement for an additional two, 1 year periods upon the mutual and written agreement of the parties.
3. The parties agree that Thyssenkrupp will provide proof of insurance that complies with the Proof of Insurance paragraph below:

Required Insurance: Commercial general liability insurance, naming the City of Galveston as an additional insured and as certificate holder, and waiving subrogation per the contractual requirements of this project; such additional insured and waiver provisions shall only apply to the extent a claim is found to be caused by acts, actions, omissions or neglects of Thyssenkrupp, and not to the extent cause by the additional insured's own acts, actions, omissions or neglects or for bare allegations; Automobile Liability Insurance and Worker's Compensation Insurance (or other state-approved program). Limits are to be equal to or greater than:

a. **Commercial general liability insurance:**

**\$2,000,000** general liability (includes products and personal, etc.)

**\$1,000,000** fire damage

**\$1,000,000** automobile damage

**\$500,000** workers compensation employers' liability

**Statutory** limits for workers compensation (or other state-approved program)

Insurance coverage shall be on an "**occurrence basis**"

- b. Thyssenkrupp agrees to notify City in the event the limits of its insurance should fall below the required City coverage's or if the insurance policies lapse and substitute insurance is not obtained.

4. **INDEMNIFICATION:** FOR CONSIDERATION RECEIVED, Thyssenkrupp shall indemnify, defend, save and hold the City of Galveston harmless, including City's officers, agents, employees and servants, from any claims, actions, lawsuits, proceedings, damages, loss, damage, judgments, liabilities or expense on account of damage to property and injuries, including death, to the extent resulting from the negligence of Thyssenkrupp or those acting under Thyssenkrupp's supervision or control in the performance of the services under this Agreement. Thyssenkrupp shall not be responsible, however, for any loss, damage, liability, judgment or expense on account of damage to property and injuries, including death, which may arise from the negligence of the City. **Thyssenkrupp shall comply with the requirements of all current applicable laws, rules and regulations and shall indemnify, and hold harmless the City and its agency members from and against Thyssenkrupp's failure to comply with those laws, and shall assume full responsibility for payments of Federal, State and local taxes on contributions imposed or required under the Social Security, worker's compensation and income tax laws.**
  
5. Termination for Convenience: The Parties may terminate this Agreement for its convenience upon providing 30 (days) written notice to either party. Thyssenkrupp shall be entitled to receive its full compensation for all services performed up to the date of termination.
  
6. This Agreement is entered into and fully performable within Galveston County, Texas. Venue shall lie in Galveston County, Texas.
  
7. Except as amended herein, all other terms and provisions of the Agreement shall remain in full force and effect. In case of conflict the terms of this Addendum take precedence.

IN WITNESS WHEREOF, the parties have duly executed this Agreement.

**CITY OF GALVESTON, TEXAS**

**THYSSENKRUPP ELEVATOR CORP.**

By: \_\_\_\_\_

By: Carl Buxton

Print: Brian Maxwell, City Manager

Print: Carl Buxton

Approved As To Form

ATTEST:

\_\_\_\_\_  
City Attorney's Office

\_\_\_\_\_  
City Secretary

# Gold Service Agreement

**Purchaser:** City Of Galveston  
PO Box 779  
Galveston, TX 77099

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

**By:** ThyssenKrupp Elevator Corporation  
11011 BROOKLET  
STE 360, TX 77099  
Phone: (281) 924-4042  
Fax: 866-251-4012  
www.thyssenkruppelevator.com

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

## GOLD SERVICE AGREEMENT

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

**Equipment To Be Maintained**

Building Name	Building Location	Manufacturer	Type Of Unit	Unit ID	# Of Stops
Scholes Field Airport	8701 Cessna	TKE	Geared	GU1475 (US97728)	5

**ThyssenKrupp Elevator Americas**



**ThyssenKrupp**

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## **Preventative Maintenance Program**

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

ThyssenKrupp Elevator will perform the following services:

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

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

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

## **Maintenance Control Program**

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

## **Quality Assurance**

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

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

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

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

## Service Requests During Normal Working Days and Hours


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

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

## Overtime Service Requests

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

## Cloud Based Remote Monitoring Service

thyssenkrupp Elevator reserves the right to install new remote-monitoring devices on your elevators (each a "Device"). Each Device collects elevator signal output (i.e., cycle counters, event counters) (the "Raw Data") and transfers it into our cloud-based IoT (Internet of Things). The data is then analyzed by us to assist thyssenkrupp in anticipating maintenance needs on your equipment. Purchaser authorizes thyssenkrupp to install the Devices and, upon termination of the service agreement, to remove them from the premises if we elect to do so. thyssenkrupp shall be the sole owner of the Devices and the data communicated to us. The Devices shall not become fixtures, and are intended to reside where they are installed and should not be accessed, tampered with, or relocated. thyssenkrupp may remove the Devices and cease all data collection and analysis at any time. If the service agreement between thyssenkrupp and Purchaser is terminated for any reason, thyssenkrupp will automatically deactivate the data collection, terminate the device software and destroy all raw data previously received. The Devices installed by thyssenkrupp contain trade secrets belonging to us, and are installed for the use and benefit of our personnel only. Purchaser agrees not to permit Purchaser personnel or any third parties to use, access, copy, or reverse engineer the Devices, *TO THE EXTENT PERMITTED BY LAW.* 

## Service History Website:

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

THE WEBSITE IS PROVIDED TO CUSTOMER "AS IS" AND WITH ALL FAULTS AND DEFECTS WITHOUT WARRANTY OF ANY KIND. TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, THYSSENKRUPP ELEVATOR EXPRESSLY DISCLAIMS ALL WARRANTIES, WHETHER EXPRESS, IMPLIED, STATUTORY OR OTHERWISE WITH RESPECT TO THE WEBSITE INCLUDING ALL IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE AND

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NON-INFRINGEMENT, AND WARRANTIES THAT MAY ARISE OUT OF COURSE OF DEALING, COURSE OF PERFORMANCE, USAGE OR TRADE PRACTICE. WITHOUT LIMITATION TO THE FOREGOING, THYSSENKRUPP ELEVATOR PROVIDES NO WARRANTY OR UNDERTAKING, AND MAKES NO REPRESENTATION OF ANY KIND THAT THE CP WILL BE ACCESSIBLE TO CUSTOMER, ACHIEVE ANY INTENDED RESULTS, MEET CUSTOMER'S REQUIREMENTS, OPERATE WITHOUT INTERRUPTION, MEET ANY PERFORMANCE OR RELIABILITY STANDARDS OR BE ERROR FREE OR THAT ANY ERRORS OR DEFECTS CAN OR WILL BE CORRECTED. TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW IN NO EVENT WILL THYSSENKRUPP ELEVATOR OR ITS AFFILIATES, BE LIABLE TO THE CUSTOMER OR ANY THIRD PARTY FOR ANY USE, INTERRUPTION, DELAY OR INABILITY TO USE THE WEBSITE OR FOR THE ACT OF ANY THIRD PARTY INCLUDING THE INCORPORATION OF A VIRUS, SPYWARE OR ANY OTHER MALICIOUS PROGRAMS.

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

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

Through its centralized ThyssenKrupp Communications call center, ThyssenKrupp Elevator will provide 7 days per week, 24 hours per day, 365 days per year dispatching service for calls placed by Purchaser after normal business working days and hours to the local ThyssenKrupp Elevator branch office and telephone monitoring on all elevator(s) maintained under this Agreement that have operational telephone equipment capable of placing a call to that call center. Depending on the nature of the call and circumstances, ThyssenKrupp Elevator's operators can call one or more of the following: Purchaser's Designated Contacts set forth in Section 2 below; Local Emergency Services at phone numbers provided by Purchaser in Section 3 below; and/or a local ThyssenKrupp Elevator service technician to be dispatched to the location of the equipment.

Purchaser hereby acknowledges that as a condition precedent to ThyssenKrupp Elevator's placement of calls to Purchaser's Designated Contacts and any Local Emergency Services under this Agreement, Purchaser must first complete Sections 1 and 2 below. Purchaser further acknowledges that it is Purchaser's sole responsibility to advise ThyssenKrupp Elevator immediately in writing of any changes to the information contained in those two (2) sections during the term of this Agreement. Purchaser acknowledges that no revision to that information will be made without ThyssenKrupp Elevator first receiving such request in writing from Purchaser's authorized representative.

Under those circumstances where ThyssenKrupp Elevator is unable to reach Purchaser's Designated Contacts set forth in Section 2 below, Purchaser hereby gives ThyssenKrupp Elevator express permission to dispatch a ThyssenKrupp Elevator service technician to the location of the equipment at Purchaser's expense in accordance with ThyssenKrupp Elevator's applicable billing rates. Purchaser further agrees that ThyssenKrupp Elevator does not assume any duty or responsibility to advise any caller, regardless of his or her location within or outside the elevator, to take or not take any specific action resulting from a medical or other emergency or any other situation including, but not limited to, entrapment of persons, evacuation, repair or return to service of any equipment.

In the event that a ThyssenKrupp Elevator call center operator perceives that a call from within the elevator constitutes a medical or other emergency, Purchaser hereby gives ThyssenKrupp Elevator the express permission to call Local Emergency Services at the telephone numbers provided by the Purchaser in Section 3 below at ThyssenKrupp Elevator's sole discretion. Under those circumstances, Purchaser agrees to pay all related charges for services provided by any Local Emergency Services in response to that call. Purchaser agrees that ThyssenKrupp Elevator shall not be responsible for ensuring an appropriate (or any) response by Local Emergency Services to that call.

None of the services described anywhere in this Agreement includes maintenance of any type or kind of the Purchaser's

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telephone or other communication equipment. The Purchaser retains possession and control of its telephone and other communication equipment and is responsible for ensuring uninterrupted operation of that equipment so that it is capable of placing a call to ThyssenKrupp Communication's call center.

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## ThyssenKrupp Communications Contact Information - To Be Completed by Purchaser

### Section 1, Elevator Detail:

Total number of elevators in Building \_\_\_\_\_

Elevator #	Elevator Telephone Number including Area Code	Elevator #	Elevator Telephone Number including Area Code

### Section 2, Purchaser Designated Contacts:

In the event of an emergency, or perceived emergency affecting the equipment covered by this Agreement, the Purchaser designates the following as its decision-making contacts.

	Contact Name	Title	Primary Telephone #	Secondary Telephone #
1				
2				
3				

### Section 3, Local Emergency Services Contact Information:

Phone # for Local Police Department: (       )       -      

Phone # for Local Fire Department: (       )       -      

### Section 4, Purchaser's Special Instructions:

The following are special instructions provided by Purchasers with respect to the information supplied above:

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

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



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## Product Information

You agree to provide ThyssenKrupp Elevator with current wiring diagrams that reflect all changes, parts catalogs, and maintenance instructions for the equipment covered by this agreement (exception: we will supply all of the above for new ThyssenKrupp elevators at no additional cost). You agree to authorize us to produce single copies of any programmable device(s) used in the equipment for the purpose of archival back-up of the software embodied therein. These items will remain your property.

## Safety

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

## Other

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

In the event of the sale, lease or other transfer of the ownership or management of the premises in which the elevator(s) or equipment described herein are located, you agree to see that such transferee is made aware of this agreement, ~~and agrees to assume and/or be bound by the conditions hereof for the balance of the unexpired term of this agreement.~~

~~Should the transferee fail to assume this agreement, you shall remain liable for all unpaid amounts, including those owed for the balance of the current unexpired term of this agreement. The transferee shall be allowed to assume any remainder of the Agreement.~~ (H) (PT) approved by TKE

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

Elevator Maintenance Agreement

12-11711

2016-275250 - AC14-16G8LRA

(PT) approved by TKE legal

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~~our employees. You recognize that your obligation to ThyssenKrupp Elevator under this clause includes payment of all attorney's fees, court costs, judgments, settlements, interest and any other expenses of litigation arising out of such claims or lawsuits.~~

approved by TKE legal PT

Removed

## Insurance

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

approved by TKE legal PT

Removed

## Items Not Covered

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

## Other Conditions

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

related to the aforementioned source majeure events

Should your system require any of the safety tests on the commencement date of this agreement, ThyssenKrupp Elevator assumes no responsibility for the day-to-day operation of the governor or safeties on traction elevators, or the hydraulic system on hydraulic elevators under the terms of this agreement until the test has been completed and the

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equipment passed. Should the respective system fail any of those tests, it shall be your sole responsibility to make necessary repairs and place the equipment in a condition that we deem acceptable for further coverage under the terms of this agreement. We shall not be liable for any damage to the building structure or the elevator resulting from the performance of any safety tests we perform at any time under this agreement. If during the initial firefighter's service test, that feature is found to be inoperable, you shall be responsible for all costs associated with necessary repair(s) to bring the elevator(s) into compliance with the applicable elevator codes in your local jurisdiction.

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

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

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

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

## Price.

The price for the services as stated in this agreement shall be Five Hundred Forty Three Dollars and Sixty Two Cents (\$543.62) per month, excluding taxes, payable Quarterly in advance.

## Term

This agreement is effective for Thirty Six (36) month(s) starting 12/01/2017, and is non-cancelable. To ensure continuous service, this agreement will be automatically renewed for successive ~~Thirty Six (36)~~ month periods, unless either party timely serves written notice upon the other party of its intention to cancel ~~renewal~~ at least ninety (90) days ~~but not more than 120 days~~ before the end of the initial Thirty Six (36) month period, or at least ninety (90) days ~~but not more than 120 days~~ before the end of any subsequent ~~Thirty Six (36)~~ month renewal period. Notice shall be sent by certified mail, return receipt requested to the address set forth on page 1 of this agreement. Time is of the essence.

## Annual Price Adjustments

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

## Early Payment Discount

(PT)  
Approved  
by TKE

Twenty  
four (24)

(Signature)

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

## Overdue Invoices

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

## Submission of Proposed Agreement when Original Agreement in Full Force and Effect

In the event that Purchaser and ThyssenKrupp Elevator are parties to an existing elevator maintenance agreement at the time this proposed agreement is submitted for consideration, the existing agreement will remain in full force and effect until such time as this proposed agreement is accepted and fully executed in writing by both parties. Upon full acceptance by both parties, this proposed agreement shall supersede all prior agreements.

## Special Considerations

The special TCPN billing rates will be granted with the execution of this contract by purchaser.

### **SERVICE AND REPAIR BILLING RATES**

Mechanic Regular \$273.67  
Mechanic overtime (1.7)\$465.24  
Mechanic - Double overtime (2.0)\$547.34

Helper Regular\$218.94  
Helper overtime (1.7)\$372.19  
Helper - Double overtime (2.0)\$437.88

Team Regular\$492.61  
Team Double overtime (2.0)\$985.22

# Gold Service Agreement

**Acceptance**

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

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

*The attached Addendum (1) is hereby made part of this agreement*

ThyssenKrupp Elevator Corporation:	City Of Galveston:	ThyssenKrupp Elevator Corporation Approval:
<p>By: <u><i>Perla Torres</i></u>            (Signature of ThyssenKrupp Elevator Representative)</p> <p>Perla Torres            Account Manager            perla.torres@thyssenkruupp.com</p> <p><u>01/19/18</u>            (Date Submitted)</p>	<p>By: _____            (Signature of Authorized Individual)</p> <p>_____            (Print or Type Name)</p> <p>_____            (Print or Type Title)</p> <p>_____            (Date of Approval)</p>	<p>By: _____            (Signature of Authorized Individual)</p> <p>Carl Buxton            Branch Manager</p> <p>_____            (Date of Approval)</p>