

THE BOARD OF SUPERVISORS OF THE COUNTY OF STANISLAUS
ACTION AGENDA SUMMARY

DEPT: General Services Agency

BOARD AGENDA # *B-7

Urgent Routine

AGENDA DATE August 24, 2010

CEO Concurs with Recommendation YES NO
(Information Attached)

4/5 Vote Required YES NO

SUBJECT:

Approval of a County-Wide Agreement with ThyssenKrupp Elevator Corporation of West Sacramento, California for Elevator Maintenance and Repair Service

STAFF RECOMMENDATIONS:

1. Approve a county-wide agreement with ThyssenKrupp Elevator Corporation for elevator maintenance and repair service.
2. Authorize the General Services Agency Director/Purchasing Agent to execute the county-wide agreement and any subsequent amendments to the county-wide agreement on behalf of the County during the term of the agreement.

FISCAL IMPACT:

The County currently has two elevator maintenance and repair service agreements in place, one with Otis Elevator Company covering maintenance and repair service on the majority of the elevators within County-owned buildings and the other with ThyssenKrupp Elevator Corporation covering the balance. These agreements have a combined annual expense of approximately \$89,100 per year, of which \$49,260 is paid from the General Fund. Approval of a county-wide elevator maintenance and repair service agreement is estimated to reduce the cost of elevator maintenance and repair service by approximately 6.4% or \$5,688 annually of which \$2,988 is a savings to the General Fund. (continued)

BOARD ACTION AS FOLLOWS:

No. 2010-527

On motion of Supervisor O'Brien, Seconded by Supervisor Chiesa

and approved by the following vote,

Ayes: Supervisors: O'Brien, Chiesa, DeMartini, and Vice-Chairman Monteith

Noes: Supervisors: None

Excused or Absent: Supervisors: Chairman Grover

Abstaining: Supervisor: None

1) X Approved as recommended

2) _____ Denied

3) _____ Approved as amended

4) _____ Other:

MOTION:

ATTEST: CHRISTINE FERRARO TALLMAN, Clerk

File No.

FISCAL IMPACT: (Continued)

The County currently has two elevator maintenance and repair service agreements in place, one with Otis Elevator Company covering maintenance and repair service on the majority of the elevators within County-owned buildings and the other with ThyssenKrupp Elevator Corporation covering the balance. These agreements have a combined annual expense of approximately \$89,100 per year, of which \$49,260 is paid from the General Fund. Approval of a county-wide elevator maintenance and repair service agreement is estimated to reduce the cost of elevator maintenance and repair service by approximately 6.4% or \$5,688 annually of which \$2,988 is a savings to the General Fund.

At this time, the General Services Agency (GSA) is requesting Board approval to enter a County-Wide Agreement with ThyssenKrupp Elevator Corporation, West Sacramento, CA (ThyssenKrupp) for elevator maintenance and repair service. The proposed term of the County-Wide Agreement with ThyssenKrupp is from September 1, 2010 to June 30, 2012 (Initial Term), with the option to renew on an annual basis for three additional one-year terms beginning July 1, 2012 and ending June 30, 2015 (collectively, Extension Term).

With the Board's approval of the County-Wide Agreement, the total expenditure for the Initial Term (through June 30, 2012) is estimated at \$166,824, of which \$92,544 is to be paid to from the General Fund. Funding to support the first year of this agreement is included in the 2010-2011 Adopted Proposed Budget for each Department using elevator maintenance and repair service. Funding for subsequent fiscal years will be included in future budget submissions. Should the determination be made to extend the County-Wide Agreement for three additional one-year terms, the total expenditure over the five years is estimated to be \$432,377 which includes pricing increases during the Extension Term estimated at approximately 3% per year. Of this total expense \$239,857 is estimated to be paid from the General Fund.

DISCUSSION:

The County has had two elevator maintenance and repair service vendors: Otis Elevator Company and ThyssenKrupp Elevator Corporation. Otis Elevator Company has been servicing the majority of the elevators and lifts in the county for the last 10 years. The current agreement with this vendor expired June 13, 2010 and is continuing on a month-to-month basis. ThyssenKrupp Elevator Corporation (ThyssenKrupp) provides services at the 12th Street Office Building and Garage facility, and the Gallo Center for the Performing Arts. The existing service agreement with this vendor expired on March 31, 2010 and is continuing on a month-to-month basis.

At this time, General Services Agency (GSA) is requesting Board approval to enter into a County-Wide Agreement with ThyssenKrupp Elevator Company based upon Request for Proposal No. 0910-08 (RFP) issued by the City of Modesto and approved by the City Council on August 4, 2010. The RFP process followed by the City is similar to that used by the County and focuses on a broad range of award criteria such as: location of offices and technicians, experience, warranties, company history, and other pertinent

criteria along with price, as opposed to the bid process, which focuses solely on pricing. In the City's RFP, however, pricing and experience were the heavily weighted criteria. Moreover, the scope of work set forth in the City's RFP is highly detailed to ensure vendor performance through specified frequency of tasks, response time to emergencies/entrapments, and standards of work performed.

The methodology used in the evaluation of ThyssenKrupp as the County's preferred vendor for elevator maintenance and repair services was as follows:

- GSA participated in the development of the scope of work used in the City's RFP for elevator maintenance and repair services. This scope of work met or exceeded the County's current elevator maintenance and repair services with respect to the number of technicians in the local area, frequency of tasks performed, and response to emergencies and entrapments.
- The City's RFP included "Participation" language, allowing other government agencies to contract with ThyssenKrupp using the same scope of work and rates. GSA approached ThyssenKrupp with the same scope of work and requested ThyssenKrupp to quote the County elevator maintenance and repair services for all County departments and facilities. Government Code § 6502 and § 6508.2 allow public agencies to jointly exercise any power common to the contracting parties (see *Tucker Land Co. v. State of California* (2001) 94 Cal. App. 4th 1191).
- GSA also verified that ThyssenKrupp quoted the same contracted rate for any extraordinary work not found in the scope of work, as was quoted for the City.
- GSA also compared overall contract pricing for similar buildings between the City and County and found that the contract pricing quoted was similar in most cases.

Request for Proposal Process

On September 11, 2009, the City Manager of the City of Modesto authorized the City's Purchasing Manager to formally issue a RFP for a managed competition process for elevator maintenance and repair services within City-owned buildings and the City/County administration building at 1010 10th Street.

On February 4, 2010, the City's Purchasing Division issued RFP No. 0910-08 for the furnishing of elevator maintenance and repair services to nine prospective proposers. In addition, the proposal was posted on the City's web site, Planet Bid, and formally advertised as required by law. The RFP contained the following key components:

- A detailed scope of work, including minimum quality, frequency standards and definition of key terms to ensure quality and safety.
- The right to adjust contract pricing or terminate services with successful proposer for failure to perform under the contract to ensure quality.
- A detailed statement of qualifications to include a description of the vendor's experience.
- The option for other government or publicly funded agencies to contract with the successful proposer based upon the terms, conditions and specifications contained in the RFP.

Approval of a County-Wide Agreement with ThyssenKrupp Elevator Corporation of West Sacramento, California for Elevator Maintenance and Repair Service

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Proposals were received from the following four (4) vendors and all were considered responsive and responsible:

- Otis Elevator Company; North Highlands, CA
- ThyssenKrupp Elevator Company; West Sacramento, CA
- Kone Elevators Inc.; West Sacramento and
- Schindler Elevator Company; Sacramento, CA

On April 15, 2010, an evaluation committee comprised of two City staff members and one County staff member was formed to formally review and evaluate the proposals, with a member of the City Purchasing Division facilitating.

Ranking was completed for each category: references; company history; experience; locations; warranty; and cost. Each committee member assigned a point value for each category. The City Purchasing Division then provided point totals for cost. Points were awarded in the "Cost" category using an accepted practice that awards the maximum number of points to the proposer with the lowest price. Each remaining proposer received proportionately lower points determined by the percentage difference between their proposed price and the lowest proposed price.

Committee members assigned points for each category with the criteria that no category could have a higher weighting than price. Based upon the evaluation criteria, the highest ranking vendor was ThyssenKrupp.

On August 4, 2010, the Modesto City Council approved the award to ThyssenKrupp Elevator Corporation and authorized the City Manager to negotiate and sign an agreement with ThyssenKrupp.

If approved, the agreement will be effective September 1, 2010 and will continue through June 30, 2012, with the option of 3 one-year renewals. The proposed new agreement will cover elevator maintenance and repair service at all county-owned facilities at a savings of approximately 6.4% or \$5,688 annually of which \$2,988 is a savings to the General Fund.

POLICY ISSUE:

Approval of this item supports the Board of Supervisors' priorities of Efficient Delivery of Public Services and by providing cost-efficient services to County departments.

STAFFING IMPACT:

Existing GSA staff will manage the contract for elevator maintenance and repair services.

CONTACT:

Keith D. Boggs, Interim GSA Director/Purchasing Agent (209) 652-1514
Melinda Pallotta, Contract Administrator (209) 567-4958

**COUNTY-WIDE AGREEMENT
FOR
INDEPENDENT CONTRACTOR SERVICES**

This Agreement for Independent Contractor Services (the "Agreement") is made and entered into by and between the County of Stanislaus ("County") and ThyssenKrupp Elevator Corporation, a Delaware corporation authorized to conduct business in the state of California ("Contractor") as of September 1, 2010.

Recitals

WHEREAS, the County has a need for elevator maintenance and repair services; and

WHEREAS, the Contractor is specially trained, experienced and competent to perform and has agreed to provide such services;

NOW, THEREFORE, in consideration of the mutual promises, covenants, terms and conditions hereinafter contained, the parties hereby agree as follows:

Terms and Conditions

1. **Scope of Work**

1.1 The Contractor shall furnish to the County upon execution of this Agreement receipt of the County's written authorization to proceed, those services and work set forth in **Exhibit A**, attached hereto and, by this reference, made a part hereof.

1.2 All documents, drawings and written work product prepared or produced by the Contractor under this Agreement, including without limitation electronic data files, are the property of the Contractor; provided, however, the County shall have the right to reproduce, publish and use all such work, or any part thereof, in any manner and for any purposes whatsoever and to authorize others to do so. If any such work is copyrightable, the Contractor may copyright the same, except that, as to any work which is copyrighted by the Contractor, the County reserves a royalty-free, non-exclusive, and irrevocable license to reproduce, publish, and use such work, or any part thereof, and to authorize others to do so.

1.3 Services and work provided by the Contractor at the County's request under this Agreement will be performed in a timely manner consistent with the requirements and standards established by applicable federal, state and County laws, ordinances, regulations and resolutions, and in accordance with a schedule of work set forth in Exhibit A. If there is no schedule, the hours and times for completion of said services and work are to be set by the Contractor; provided, however, that such schedule is subject to review by and concurrence of the County.

2. **Consideration**

2.1 County shall pay Contractor as set forth in Exhibit A.

2.2 Except as expressly provided in Exhibit A of this Agreement, Contractor shall not be entitled to nor receive from County any additional consideration, compensation, salary, wages or other type of remuneration for services rendered under this Agreement. Specifically,

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Contractor shall not be entitled by virtue of this Agreement to consideration in the form of overtime, health insurance benefits, retirement benefits, disability retirement benefits, sick leave, vacation time, paid holidays or other paid leaves of absence of any type or kind whatsoever.

2.3 County will not withhold any Federal or State income taxes or Social Security tax from any payments made by County to Contractor under the terms and conditions of this Agreement. Payment of all taxes and other assessments on such sums is the sole responsibility of Contractor. County has no responsibility or liability for payment of Contractor's taxes or assessments.

2.4 Pursuant to Penal Code section 484b and to Business and Professions Code section 7108.5, the Contractor must apply all funds and progress payments received by the Contractor from the County for payment of services, labor, materials or equipment to pay for such services, labor, materials or equipment. Pursuant to Civil Code section 1479, the Contractor shall direct or otherwise manifest the Contractor's intention and desire that payments made by the Contractor to subcontractors, suppliers and materialmen shall be applied to retire and extinguish the debts or obligations resulting from the performance of this Agreement.

3. Term

3.1 The term of this Agreement shall be from the date of approval of this Agreement until completion of the agreed upon services unless sooner terminated as provided below or unless some other method or time of termination is listed in Exhibit A.

3.2 Should either party default in the performance of this Agreement or materially breach any of its provisions, the other party, at that party's option, may terminate this Agreement by giving written notification to the other party.

3.3 This Agreement shall terminate automatically on the occurrence of (a) bankruptcy or insolvency of either party, (b) sale of Contractor's business, (c) cancellation of insurance required under the terms of this Agreement, and (d) if, for any reason, Contractor ceases to be licensed or otherwise authorized to do business in the State of California, and the Contractor fails to remedy such defect or defects within thirty (30) days of receipt of notice of such defect or defects.

3.4 The County may terminate this agreement upon 30 days prior written notice to the Contractor. Termination of this Agreement shall not affect the County's obligation to pay for all fees earned and reasonable costs necessarily incurred by the Contractor as provided in Paragraph 2 herein, subject to any applicable setoffs.

4. Required Licenses, Certificates and Permits

Any licenses, certificates or permits required by the federal, state, county or municipal governments for Contractor to provide the services and work described in Exhibit A must be procured by Contractor and be valid at the time Contractor enters into this Agreement. Further, during the term of this Agreement, Contractor must maintain such licenses, certificates and permits in full force and effect. Licenses, certificates and permits may include but are not

limited to driver's licenses, professional licenses or certificates and business licenses. Such licenses, certificates and permits will be procured and maintained in force by Contractor at no expense to the County.

5. Office Space, Supplies, Equipment, Etc.

Unless otherwise provided in Exhibit A, Contractor shall provide such office space, supplies, equipment, vehicles, reference materials and telephone service as is necessary for Contractor to provide the services identified in Exhibit A to this Agreement. County is not obligated to reimburse or pay Contractor for any expense or cost incurred by Contractor in procuring or maintaining such items. Responsibility for the costs and expenses incurred by Contractor in providing and maintaining such items is the sole responsibility and obligation of Contractor.

6. Insurance

6.1 Contractor shall take out, and maintain during the life of this Agreement, insurance policies with coverage at least as broad as follows:

6.1.1 General Liability. Comprehensive general liability insurance covering bodily injury, personal injury, property damage, products and completed operations with limits of no less than One Million Dollars (\$1,000,000) per incident or occurrence. If Commercial General Liability Insurance or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to any act or omission by Contractor under this Agreement or the general aggregate limit shall be twice the required occurrence limit.

6.1.2 Automobile Liability Insurance. If the Contractor or the Contractor's officers, employees, agents, representatives or subcontractors utilize a motor vehicle in performing any of the work or services under this Agreement, owned/non-owned automobile liability insurance providing combined single limits covering bodily injury, property damage and transportation related pollution liability with limits of no less than One Million Dollars (\$1,000,000) per incident or occurrence.

6.1.3 Workers' Compensation Insurance. Workers' Compensation insurance as required by the California Labor Code. In signing this contract, the Contractor certifies under section 1861 of the Labor Code that the Contractor is aware of the provisions of section 3700 of the Labor Code which requires every employer to be insured against liability for workmen's compensation or to undertake self-insurance in accordance with the provisions of that code, and that the Contractor will comply with such provisions before commencing the performance of the work of this Agreement.

6.2 Any deductibles, self-insured retentions or named insureds must be declared in writing and approved by County. At the option of the County, either: (a) the insurer shall reduce or eliminate such deductibles, self-insured retentions or named insureds, or (b) the Contractor shall provide a bond, cash, letter of credit, guaranty or other security satisfactory to the County guaranteeing payment of the self-insured retention or deductible and payment of any and all costs, losses, related investigations, claim administration and defense expenses. The County, in its sole discretion, may waive the requirement to reduce or eliminate deductibles or self-

insured retentions, in which case, the Contractor agrees that it will be responsible for and pay any self-insured retention or deductible and will pay any and all costs, losses, related investigations, claim administration and defense expenses related to or arising out of the Contractor's defense and indemnification obligations as set forth in this Agreement.

6.3 The Contractor shall obtain a specific endorsement to all required insurance policies, except Workers' Compensation insurance and Professional Liability insurance, if any, naming the County and its officers, officials and employees as additional insureds regarding: (a) liability arising from or in connection with the performance or omission to perform any term or condition of this Agreement by or on behalf of the Contractor, including the insured's general supervision of its subcontractors; (b) services, products and completed operations of the Contractor; (c) premises owned, occupied or used by the Contractor; and (d) automobiles owned, leased, hired or borrowed by the Contractor. For Workers' Compensation insurance, the insurance carrier shall agree to waive all rights of subrogation against the County and its officers, officials and employees for losses arising from the performance of or the omission to perform any term or condition of this Agreement by the Contractor.

6.4 The Contractor's insurance coverage shall be primary insurance regarding the County and County's officers, officials and employees. Any insurance or self-insurance maintained by the County or County's officers, officials and employees shall be excess of the Contractor's insurance and shall not contribute with Contractor's insurance.

6.5 Any failure to comply with reporting provisions of the policies shall not affect coverage provided to the County or its officers, officials, employees or volunteers.

6.6 The Contractor's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.

6.7 Each insurance policy required by this section shall be endorsed to state that coverage shall not be suspended, voided, canceled by either party except after thirty (30) days' prior written notice has been given to County. The Contractor shall promptly notify, or cause the insurance carrier to promptly notify, the County of any change in the insurance policy or policies required under this Agreement, including, without limitation, any reduction in coverage or in limits of the required policy or policies.

6.8 Insurance shall be placed with California admitted insurers (licensed to do business in California) with a current rating by Best's Key Rating Guide acceptable to the County; provided, however, that if no California admitted insurance company provides the required insurance, it is acceptable to provide the required insurance through a United States domiciled carrier that meets the required Best's rating and that is listed on the current List of Eligible Surplus Line Insurers maintained by the California Department of Insurance. A Best's rating of at least A-VII shall be acceptable to the County; lesser ratings must be approved in writing by the County.

6.9 Contractor shall require that all of its subcontractors are subject to the insurance and indemnity requirements stated herein, or shall include all subcontractors as additional insureds under its insurance policies.

6.10 At least ten (10) days prior to the date the Contractor begins performance of its obligations under this Agreement, Contractor shall furnish County with certificates of insurance, and with original endorsements, showing coverage required by this Agreement, including,

without limitation, those that verify coverage for subcontractors of the Contractor. The certificates and endorsements for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf. All certificates and endorsements shall be received and, in County's sole and absolute discretion, approved by County. County reserves the right to require complete copies of all required insurance policies and endorsements, at any time.

6.11 The limits of insurance described herein shall not limit the liability of the Contractor and Contractor's officers, employees, agents, representatives or subcontractors.

7. Defense and Indemnification

7.1 To the fullest extent permitted by law, Contractor shall indemnify, hold harmless and defend the County and its agents, officers and employees from and against all claims, damages, losses, judgments, liabilities, expenses and other costs, including litigation costs and attorneys' fees, arising out of, resulting from, or in connection with the performance of this Agreement by the Contractor or Contractor's officers, employees, agents, representatives or subcontractors and resulting in or attributable to personal injury, death, or damage or destruction to tangible or intangible property, including the loss of use; provided, however, such indemnification shall not extend to or cover loss, damage or expense arising from the sole negligence or willful misconduct of the County or its agents, officers and employees.

7.2 Contractor's obligation to defend, indemnify and hold the County and its agents, officers and employees harmless under the provisions of this paragraph is not limited to or restricted by any requirement in this Agreement for Contractor to procure and maintain a policy of insurance.

8. Status of Contractor

8.1 All acts of Contractor and its officers, employees, agents, representatives, subcontractors and all others acting on behalf of Contractor relating to the performance of this Agreement, shall be performed as independent contractors and not as agents, officers or employees of County. Contractor, by virtue of this Agreement, has no authority to bind or incur any obligation on behalf of County. Except as expressly provided in Exhibit A, Contractor has no authority or responsibility to exercise any rights or power vested in the County. No agent, officer or employee of the County is to be considered an employee of Contractor. It is understood by both Contractor and County that this Agreement shall not be construed or considered under any circumstances to create an employer-employee relationship or a joint venture.

8.2 At all times during the term of this Agreement, the Contractor and its officers, employees, agents, representatives or subcontractors are, and shall represent and conduct themselves as, independent contractors and not employees of County.

8.3 Contractor shall determine the method, details and means of performing the work and services to be provided by Contractor under this Agreement. Contractor shall be responsible to County only for the requirements and results specified in this Agreement and, except as expressly provided in this Agreement, shall not be subjected to County's control with respect to the physical action or activities of Contractor in fulfillment of this Agreement. Contractor has control over the manner and means of performing the services under this Agreement. Contractor is permitted to provide services to others during the same period

service is provided to County under this Agreement. If necessary, Contractor has the responsibility for employing other persons or firms to assist Contractor in fulfilling the terms and obligations under this Agreement.

8.4 If in the performance of this Agreement any third persons are employed by Contractor, such persons shall be entirely and exclusively under the direction, supervision and control of Contractor. All terms of employment including hours, wages, working conditions, discipline, hiring and discharging or any other term of employment or requirements of law shall be determined by the Contractor.

8.5 It is understood and agreed that as an independent Contractor and not an employee of County, the Contractor and the Contractor's officers, employees, agents, representatives or subcontractors do not have any entitlement as a County employee, and do not have the right to act on behalf of the County in any capacity whatsoever as an agent, or to bind the County to any obligation whatsoever.

8.6 It is further understood and agreed that Contractor must issue W-2 forms or other forms as required by law for income and employment tax purposes for all of Contractor's assigned personnel under the terms and conditions of this Agreement.

8.7 As an independent Contractor, Contractor hereby indemnifies and holds County harmless from any and all claims that may be made against County based upon any contention by any third party that an employer-employee relationship exists by reason of this Agreement.

9. Records and Audit

9.1 Contractor shall prepare and maintain all writings, documents and records prepared or compiled in connection with the performance of this Agreement for a minimum of four (4) years from the termination or completion of this Agreement. This includes any handwriting, typewriting, printing, photostatic, photographing and every other means of recording upon any tangible thing, any form of communication or representation including letters, words, pictures, sounds or symbols or any combination thereof.

9.2 Any authorized representative of County shall have access to any writings as defined above for the purposes of making audit, evaluation, examination, excerpts and transcripts during the period such records are to be maintained by Contractor. Further, County has the right at all reasonable times to audit, inspect or otherwise evaluate the work performed or being performed under this Agreement.

10. Confidentiality

The Contractor agrees to keep confidential all information obtained or learned during the course of furnishing services under this Agreement and to not disclose or reveal such information for any purpose not directly connected with the matter for which services are provided.

11. Nondiscrimination

During the performance of this Agreement, Contractor and its officers, employees, agents, representatives or subcontractors shall not unlawfully discriminate in violation of any federal, state or local law, rule or regulation against any employee, applicant for employment or

person receiving services under this Agreement because of race, religion, color, national origin, ancestry, physical or mental disability, medical condition (including genetic characteristics), marital status, age, political affiliation, sex, or sexual orientation. Contractor and its officers, employees, agents, representatives or subcontractors shall comply with all applicable Federal, State and local laws and regulations related to non-discrimination and equal opportunity, including without limitation the County's nondiscrimination policy; the Fair Employment and Housing Act (Government Code sections 12900 et seq.); California Labor Code sections 1101, 1102 and 1102.1; the Federal Civil Rights Act of 1964 (P.L. 88-352), as amended; and all applicable regulations promulgated in the California Code of Regulations or the Code of Federal Regulations.

12. Assignment

This is an agreement for the services of Contractor. County has relied upon the skills, knowledge, experience and training of Contractor and the Contractor's firm, associates and employees as an inducement to enter into this Agreement. Contractor shall not assign or subcontract this Agreement without the express written consent of County. Further, Contractor shall not assign any monies due or to become due under this Agreement without the prior written consent of County.

13. Waiver of Default

Waiver of any default by either party to this Agreement shall not be deemed to be waiver of any subsequent default. Waiver or breach of any provision of this Agreement shall not be deemed to be a waiver of any other or subsequent breach, and shall not be construed to be a modification of the terms of this Agreement unless this Agreement is modified as provided below.

14. Notice

Any notice, communication, amendment, addition or deletion to this Agreement, including change of address of either party during the term of this Agreement, which Contractor or County shall be required or may desire to make shall be in writing and may be personally served or, alternatively, sent by prepaid first class mail to the respective parties as follows:

To County: County of Stanislaus
Attention: Purchasing Agent
1010 10th Street, Suite 5400
Modesto, CA 95354

To Contractor: Thyssenkrupp Elevator Corporation
940 Riverside Parkway, Suite 20
West Sacramento, CA 95605

15. Conflicts

Contractor agrees that it has no interest and shall not acquire any interest direct or indirect which would conflict in any manner or degree with the performance of the work and services under this Agreement.

16. Severability

If any portion of this Agreement or application thereof to any person or circumstance shall be declared invalid by a court of competent jurisdiction or if it is found in contravention of any federal, state or county statute, ordinance or regulation the remaining provisions of this Agreement or the application thereof shall not be invalidated thereby and shall remain in full force and effect to the extent that the provisions of this Agreement are severable.

17. Amendment

This Agreement may be modified, amended, changed, added to or subtracted from by the mutual consent of the parties hereto if such amendment or change is in written form and executed with the same formalities as this Agreement and attached to the original Agreement to maintain continuity.

18. Entire Agreement

This Agreement supersedes any and all other agreements, either oral or in writing, between any of the parties herein with respect to the subject matter hereof and contains all the agreements between the parties with respect to such matter. Each party acknowledges that no representations, inducements, promises or agreements, oral or otherwise, have been made by any party, or anyone acting on behalf of any party, which are not embodied herein, and that no other agreement, statement or promise not contained in this Agreement shall be valid or binding.

19. Advice of Attorney

Each party warrants and represents that in executing this Agreement, it has received independent legal advice from its attorneys or the opportunity to seek such advice.

20. Construction

Headings or captions to the provisions of this Agreement are solely for the convenience of the parties, are not part of this Agreement, and shall not be used to interpret or determine the validity of this Agreement. Any ambiguity in this Agreement shall not be construed against the drafter, but rather the terms and provisions hereof shall be given a reasonable interpretation as if both parties had in fact drafted this Agreement.

21. Governing Law and Venue

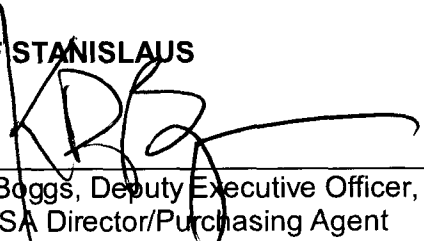
This Agreement shall be deemed to be made under, and shall be governed by and construed in accordance with, the laws of the State of California. Any action brought to enforce the terms or provisions of this Agreement shall have venue in the County of Stanislaus, State of California.

[SIGNATURES SET FORTH ON FOLLOWING PAGE]

IN WITNESS WHEREOF, the parties or their duly authorized representatives have executed this Agreement on the day and year first hereinabove written.

COUNTY OF STANISLAUS

THYSSENKRUPP ELEVATOR CORPORATION

By: 
Keith D. Boggs, Deputy Executive Officer,
Interim GSA Director/Purchasing Agent

By: 
Robbie Elrod, Contract Analyst

"County"

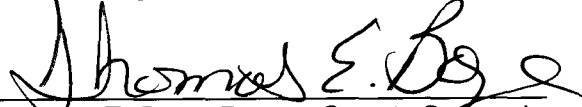
"Contractor"

BOS APPROVED: Resolution # 2010-527
DATED: August 24, 2010

APPROVED AS TO CONTENT:
General Services Agency – Facilities
Maintenance Division

By: 
Bob Carpenter, Facilities Manager

APPROVED AS TO FORM:
John P. Doering, County Counsel

By: 
Thomas E. Boze, Deputy County Counsel

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EXHIBIT A

A. SCOPE OF WORK

The Contractor shall provide elevator maintenance and repair services on twenty-nine (29) County-owned throughout Stanislaus County. These lifts include hydraulic passenger, hydraulic freight, basement drum, basement traction, overhead traction and plunger hydroelectric units used for passenger and freight elevators located in office buildings and parking garages. Units in current operation were manufactured by Cal West, Dover, ESCO, Keystone, Kone, Montgomery, Otis, ThyssenKrupp, and US Elevators.

Building Name	Address	Elevator Type
Admin Annex IV (Old B of A) Clerk-Recorder	1021 I Street, Modesto	Hydroelectric
Admin Annex IV (Old B of A) Clerk-Recorder	1021 I Street, Modesto	Hydroelectric
County Annex VI	801 11th Street, Modesto	Traction
Downtown Jail	1100 I Street, Modesto	Traction
Ag Center	3800 Comucopia Way, Modesto	Hydroelectric
Community Services Agency (CSA)	251 E Hackett, Modesto	Hydroelectric
Community Services Agency (CSA)	251 E Hackett, Modesto	Hydroelectric
Community Services Agency (CSA)	251 E Hackett, Modesto	Hydroelectric
Public Safety Center	200 E Hackett, Modesto	Hydroelectric
Sheriff's Operation Center	250 E Hackett, Modesto	Hydroelectric
Modesto Main Library	1500 I Street, Modesto	Hydroelectric
Modesto Main Library	1500 I Street, Modesto	Hydroelectric
Modesto Main Library	1500 I Street, Modesto	Hydroelectric
Ceres Storage Facility	1900 Memorial Drive, Ceres	Hydroelectric
Ceres Storage Facility	1900 Memorial Drive, Ceres	Hydroelectric
Health Services Agency - Central	830 Scenic Drive, Modesto	Traction
Health Services Agency - Central	830 Scenic Drive, Modesto	Traction
Health Services Agency - Building 1	830 Scenic Drive, Modesto	Hydroelectric
Health Services Agency - Building 2	830 Scenic Drive, Modesto	Traction
Health Services Agency - Hydro	830 Scenic Drive, Modesto	Hydraulic
Health Services Agency - Basement Drum	830 Scenic Drive, Modesto	Base Drum
Medical Arts Building	700 17th Street, Modesto	Hydroelectric
12th Street Office Building	832 12th Street, Modesto	Traction
12th Street Office Building	832 12th Street, Modesto	Traction
12th Street Garage	832 12th Street, Modesto	Traction
12th Street Garage	832 12th Street, Modesto	Traction
Gallo Arts Center	1000 I Street, Modesto	Hydraulic
Gallo Arts Center	1000 I Street, Modesto	Hydraulic
Gallo Arts Center	1000 I Street, Modesto	Hydraulic

Service requirements shall include monthly preventative maintenance and safety inspections; monthly fire inspections (Phase 1 and 2); semi-annual inspections; and emergency service and repairs on an "as needed" basis. Contractor shall provide all labor, materials, equipment, tools, licenses, bonds and insurance necessary to provide services hereunder.

1. SCHEDULED SERVICE PROGRAMS:

A. The monthly preventative maintenance program shall meet the minimum standards established by Original Manufacturer for elevators/lifts, and shall include all labor and necessary materials and parts to service and repair the elevator including but not limited to, AC and DC motors, SCR drives, generators, commutations, brushes, brush holders, fuses, controller, selectors, relays, solid state components, resistors, condensers, transformers, dash-pots, timing devices, computer interface/devices, printed circuit boards, worm gears, thrust bearings, brake magnet coils, brake motors, brake shoes, motor windings, rotating elements, contact coils, operating resistances, motor circuits, magnet frame, leveling devices, guide rails and supports, Counterweight buffers, interlocks and contacts for the vehicle doors and gates, vehicle door operation devices and lights, push buttons, indicators, hall lanterns, bulb replacement, hydraulic cylinder, plunger pumps, valves, and all elevator signal scheduling accessory equipment.

B. Car and Counterweight guide rails shall be kept clean and properly lubricated, except when roller type guides are involved. When necessary, the Contractor shall replace guide shoe gibes and rollers, to ensure smooth and quiet operation. All oil reservoirs shall be kept properly sealed to prevent leakage.

Contractor shall develop a comprehensive preventative maintenance schedule for all Single-Bottom Hydraulic elevators that includes monthly reporting of fluids added to the system and leaks observed in the system. Contractor shall provide reporting as necessary as to the adoption of ASME code A17.1.2000 by the State of California.

C. Contractor shall maintain vertical transportation equipment to provide for reliable and efficient operation. Operation of vertical transportation equipment shall be smooth and quiet, and free from excessive jarring, jerking, loping, and swaying.

D. Contractor shall maintain elevators to provide for a comfortable ride with smooth acceleration, deceleration, start, and soft stop. Elevator door operation shall be quiet with smooth checking at the extremes of travel.

E. Keep the exterior of the machinery and any other part of the equipment that is subject to rust properly painted and presentable at all times. The motor windings and controller coils are to be periodically treated with proper insulating compound. Elevator rooms and pit areas shall be clean and free of debris and clutter.

F. The safety inspection and fire inspection Phase 1 and 2, shall be performed monthly in conjunction with the preventative maintenance, following ANSI/ASME A17.1 guidelines. Results from inspections shall be submitted to the County.

G. The systematic examination shall include adjustments, cleaning and lubrication of all of the moving parts of the elevator. The Contractor shall supply all lubricants and cleaning materials. All lubricants shall be of proper grade for the purpose used.

2 SEMI-ANNUAL INSPECTION PROGRAM:

- A. The Contractor shall test all safety devices and governors every six (6) months as required by the latest edition of the California State Elevator Safety Code. The Contractor shall promptly correct any defects that may be found testing and examining the safety devices.
- B. Examine and equalize the tension of all hoisting ropes. Replace all hoisting ropes including governor ropes whenever necessary to ensure adequate safety as designed by the Original Manufacturer and required by the State Division of Industrial Safety. Repair and/or replace all electrical wiring and conductors extending to the elevator from the main line switch in the machine rooms and outlets in the hoist ways.

3. CODE TESTING REQUIRED:

- A. Contractor shall perform all State and ANSI required testing, including: governor no-load tests, buffer tests, one-year and five-year safety tests as applicable, five-year pressure, leak and load test of hydraulic systems, and all other vertical transportation testing required by law and existing codes. Code testing shall be billed separately at quoted rates.
- B. State Inspection Preliminary Safety Orders. All State of California Preliminary Safety Orders shall be completed by Contractor within State-required compliance time with no extensions. Contractor shall provide monthly report.

4. GENERAL REQUIREMENTS:

- A. All services and repairs shall be performed by skilled elevator repair personnel directly employed and supervised by the Contractor. All scheduled services shall be performed Monday through Friday, between the hours from 7:00 A.M. to 5:00 P.M., excluding all major holidays. The Contractor shall have the ability to respond to all emergency service and repair calls twenty-four (24) hours per day, seven (7) days per week.
- B. Callbacks on scheduled services shall be performed Monday through Friday, between the hours from 7:00 A.M. to 5:00 P.M., excluding all major holidays. After hour callbacks shall be charged and invoiced by the call at the appropriate rates. There will be no charge for entrapments.
- C. The Contractor shall maintain original wiring diagrams for each of the elevators. These diagrams shall remain the property of the County. If these diagrams are not available or cannot be obtained from the manufacturer, the Contractor shall produce the diagrams for each elevator, within the first year of the contract.
- D. The Contractor shall furnish and replace all parts that are worn from routine use. Only parts that are correctly designed and suitable in all respects shall be used. The Contractor shall have and maintain locally a supply of repair parts sufficient for the normal maintenance and repair of elevator equipment.
- E. The Contractor shall maintain in each elevator machine room or as part of his local on hand inventory, a supply of frequently used replacement parts and lubricants to meet the specific

requirements of each elevator. All parts replaced under any resulting contract, shall be with new parts, or refurbished parts of the highest standard. The Contractor shall furnish all replacement parts in exchange for parts replaced.

- F. Extensive or major repairs that may be required on any elevator shall be competitively bid. This shall include all parts, materials, equipment and labor.
 - G. For all scheduled maintenance, all rates quoted shall include time and mileage. The County shall acknowledge no additional charges for time or mileage.
 - H. The Contractor shall maintain an on-site log containing the day, date, time, printed name and written signature of the service person for all units and all site visits.
 - I. All work shall be performed in accordance with all Federal, State and Local laws.
 - J. Any contracts resulting from this proposal shall require that a licensed journeymen elevator/escalator mechanic who is in compliance with all governing laws and regulations regarding elevator maintenance perform all work.
 - K. The County shall be responsible for all elevator phones.
5. EMERGENCY SERVICE REPAIRS: There may be times when backup emergency service repairs are required. Emergency services are standalone calls, as required, outside the preventative maintenance program. The Contractor shall have the ability to respond to these emergency calls twenty-four (24) hours per day, seven (7) days per week.
- A. The Contractor shall have the ability to respond to emergencies by having a service person or service team on site within thirty (30) minutes for a stuck, occupied elevator, or within one hour for an unoccupied elevator after receiving a service request. There will be no charge for entrapments.
 - B. The Contractor shall receive compensation at the rates proposed, if an emergency call is requested and the inspection reveals defects to the system or system equipment that fall outside of the scope of service defined under the preventative maintenance program.
 - C. The Contractor shall furnish two (2) local area phone numbers of service repair technicians directly employed by the Contractor. These technicians shall be experienced on elevator systems and the systems operation.
6. PARTS INVENTORY REQUIREMENTS: Contractor agrees to the following requirements and authorization of parts used in the work:
- A. Major Component Parts (Electrical). Motor armatures are to be maintained in stock.
 - B. Major Component Parts (Mechanical). If the Contractor does not have machine gears, frames, sheaves, rails, and similar mechanical components in stock, Contractor shall provide County current information on sources for these items.

- C. Special Electrical Parts. Contractor acknowledges that Elevator Control Systems contain solid state printed circuit modules. Contractor agrees to maintain in inventory, a sufficient amount of modules and component parts to replace and/or repair any of these units, should failure occur. Contractor warrants, there shall not be any elevator down time in excess of that which is to be reasonably expected in the industry.
 - D. Job Material Inventory. Contractor shall maintain a supply of contacts, coils, leads, hydraulic valves, escalator rollers, comb plates, door rollers, lubricants, wiping cloths, and other minor parts in each elevator machine room for the term of the contract.
 - E. Spare Parts Inventory. Contractor shall maintain a supply of the elevator and lift-chair replacement parts, specific to the equipment outlined in this document, in their warehouse inventory. This inventory shall include, but is not limited to, door operator motors, brake magnets, controller switch contacts, selector switch contacts, solid state components including but not limited to car positioning devices, door hangers, rollers, hoistway limit switches, hydraulic valves, etc.
 - F. Parts Replacement Policy. Contractor shall not alter equipment parts and Original Equipment Manufacturer (OEM) design with other manufacturers unless OEM has discontinued the item and the parts are no longer available. Parts manufactured by companies other than OEM, but supplied to the OEM as part of their overall product may be acceptable, if the part is of the same design and character. Relays, selector parts, coils, rollers, touch buttons, proximity edges, etc. are duplicated by other nationally recognized manufacturers. These proven suppliers may be recognized as equal, so long as their product matches the existing part and Contractor obtains County written consent prior to installing such parts.
7. WORK NOT EXCLUDED FROM CONTRACT: Contractor shall not be required to install new attachments as may be recommended or directed by insurance companies, Federal, State, Municipal or Governmental authorities, subsequent to the date of the Agreement, unless compensated for such installation.
- A. Contractor shall **not** be responsible for the following services:
 - i. Repairs or renewals necessitated by ordinary wear and tear only shall apply to this contract, and the Contractor shall not be required to make adjustments. Repairs required because of negligence, accident or misuse of the equipment, environmental conditions including leakage, or other causes beyond the Contractor's control except ordinary wear and tear. **NOTE: All hydraulic valves shall be covered by the terms of this Agreement and, if replacement is necessary, replacement shall be covered under the terms of the agreement at no additional cost to the County.**
 - ii. The following items are **not** included maintaining, refinishing, repairing or replacement of any components of the:
 - a. Elevator cab, its floor, floor covering, sills, handrails, ceilings, etc.
 - b. Hoistway enclosures, doors, frames, other portions of equipment subject to public abuse.

- c. Hydraulic cylinders, casings, hydraulic piping, cathodic protection systems.
 - d. Batteries for switches, breakers and feeders to control equipment.
 - e. Obsolete equipment no longer available through normal supply sources.
 - f. If the original equipment was not manufactured or installed by the Contractor or was provided by the County such as but not limited to: Alarm, Surety, intercom or other systems, any problem with design, material or workmanship are specifically excluded from coverage.
 - g. Smoke sensors or heat detectors.
- iii. In the event tests are required by contract, the County understands that the tests impose upon the equipment greater strains than those arising from normal operation.
- a. It is agreed that in making such tests, the Contractor shall not be liable for leakage, loss, damage, injury or destruction of persons or property, except those of the Contractor, because of the action or failure of any of these devices.
 - b. If repairs are necessary before or after such tests to meet code or performance requirements, such work shall be considered as an extra and payable as a separate order.
 - c. The Contractor is not obligated to install new attachments on the elevator, make new or different tests or do other things not required by governmental regulations in effect on the date the Agreement was first entered into whether or not recommended or directed by insurance companies or by governmental authorities; nor make any replacements with parts of a different design unless agreed to separately in writing.
- iv. Replacements with parts of a different design.
- a. Contractor shall notify the County should any of the above items require action. County approval of any additional work shall be in writing.
 - b. In the event modifications and additions have been made to the elevator equipment by other contractors and are not operating properly or do not meet State of California Codes, Contractor shall not be responsible to correct alterations. Contractor shall maintain existing system as to build design. Contractor shall conduct tests of the circuits/alterations in the presence of the Technical Liaison of County to determine Code compliance and proper operation.

8. STAFFING REQUIREMENTS:

- A. Contractor shall provide, at all times, adequate and expert managerial and administrative supervision for its employee in the Service Area. Contractor agrees that all persons working for or on behalf of Contractor whose duties bring them upon the premises shall obey the rules and regulations that are established by the County and shall comply with the reasonable directions of its officers.
- B. Contractor shall provide sufficient back-up in times of staff shortages due to vacations.
- C. Each of Contractor's staff working in security-sensitive facilities (as determined by the County) shall at Contractor's expense:
 - a. Pass a Department of Justice and F.B. I. background check;

- b. Pass a drug screen at an approved medical facility; and
- c. Be bondable.

9. PERFORMANCE GUARANTEE AND FAILURE TO PERFORM:

- A. Failure to provide services required in accordance with this Agreement shall be cause for retention of monthly fees equal to the reduction of Contractor's services, and shall continue until full normal service is restored. Contractor may, at his option, choose to make up time lost at the conclusion of any period of interruption of service.
- B. If County is without the use of an elevator for more than two (2) consecutive days due to a non-scheduled repair, the cost to provide maintenance for that elevator will be credited to the County at the next month's billing. If, however, the problem is caused by vandalism or a cause other than normal wear and tear, the penalty shall be waived. If an elevator is to be out of service for something other than routine service, such as a repair, prior arrangements with the County shall be made prior to removing the elevator from service.
- C. Should an individual elevator experience a repetitive problem (same symptoms/same affects), on three (3) occasions during a thirty (30) consecutive day period, the cost to provide maintenance for that elevator will be credited to the County at the next month's billing. If, however, the problem is caused by vandalism or a cause other than normal wear and tear, the penalty shall be waived.
- D. County shall give Contractor written notice of deficiencies by copies of mutually agreed on contract performance report and if instances of unsatisfactory services are not remedied the following work service day, the cost of re-inspection may be applied.
- E. The Parties hereto agree that due to the obligations of Contractor to maintain as effective inspections systems, Contractor will be conclusively presumed to have knowledge of work not preformed, and that therefore, such written notice will not be a prerequisite for withholding payment for unperformed services.
- F. Contractor shall correct and respond to all deficiencies listed on State Preliminary Notices and Orders To Comply in the time allotted. Should the Contractor not rectify all deficiencies in the time allotted, one month's billing for each elevator shall be deducted from the monthly billing next billing cycle.
- G. Should the Contractor not respond in the time allotted for emergency calls, Contractor will deduct the cost of one month maintenance for that elevator on that month's contract billing.
- H. In the case of non-performed work, at the County's discretion:
 - i. Will withhold, from the Contractor's invoice, all billing associated with that location for such non-performed work as defined by the County.
 - ii. May, at its option, perform the services by County personnel or other means.
- I. In the case of unsatisfactory work, at the County's discretion:
 - i. Will withhold, from the Contractor's invoice, all billing associated with that location, unsatisfactory work as defined by the County.

ii. May, at its option, perform the services by County personnel or other means.

J. Repeated instances of non-performance or unsatisfactory work/performance will be grounds for termination of the Agreement.

10. SUSPENSION OF WORK:

- A. County unilaterally may order Contractor, in writing, to suspend, delay or interrupt all or any part of the work for such period of time as they may determine to be in the best interest of the County. Reasons may include, but not limited to, the following:
- B. Fire or other casualty, which renders the facility or any part thereof, unfit for occupancy or use immediately.
- C. Interruption of facility services or systems, such as utilities, elevator, plumbing, electrical, heating/cooling systems, which renders the facility or any part thereof unfit for occupancy or use immediately.
- D. A facility or any part thereof remaining vacant or unoccupied immediately by County relocating the occupants to another facility; or performing remodeling, renovations, and/or construction within a facility or part thereof.

11. NOTICE OF SUSPENSION OF WORK:

County shall give notice of suspension of work and effective date as follows:

- A. If work suspension is due to paragraph 10 A or B above, verbal notice will be given within twenty-four (24) hours of effective date; written confirmation to follow.
- B. If suspension is due to paragraph 10 C above, written notice at least ten (10) working days in advance will be given prior to effective date. Reduction in payment during a suspension period will be calculated on prorated basis of the proportion of the monthly rate listed on the Proposal Submittal.

12. INTERRUPTED SERVICE:

In the event that the County declares an emergency due to road or weather conditions or other reasons, and the area is closed for the day or available later, the County may grant excused absences to Contractor's employees or may require Contractor to have the employees make up the lost time in order to complete the required service. Contractor shall make every effort to provide required services, particularly if the occurrence is on a Friday or is on a day preceding a holiday. Work should be performed during the holiday or weekend so that the area will be landscaped prior to office hours on the following work day.

13. WORK ORDERS:

The Contractor shall prepare a complete and detailed pre-numbered work order for all scheduled maintenance and emergency repairs. The work order shall include, but not

limited to, the date and time of the service call, the manufacturer brand, model number, description and serial number of the equipment serviced, the length of service or repair time in hours and minutes, a detailed description of the service or repair performed, and if applicable, a detailed list of parts used in performing the service or repair. The Contractors' service technician and County agent shall sign the work order and the County shall retain a copy of the work order.

14. CONTRACTOR EMPLOYEE UNIFORMS:

All employees of the Contractor shall wear uniform-style shirts bearing the Contractor's business name while performing contracted services on County sites. Upon award of a contract, the Contractor shall furnish a list of his/her employees to the County Technical Liaisons.

15. INTERRUPTION OF UTILITIES:

The Contractor shall notify the technical liaison(s) at least seven (7) business days in advance of any intended interruption of utility services due to this work. Times and dates for such interruption shall be at the discretion of the County.

16. DAMAGE BY AGENCIES:

The County shall bear the cost for all damages to the elevators and elevator systems caused by the agencies.

17. PEDESTRIAN SAFETY:

The Contractor shall place barricades and/or safety ribbon as necessary to restrict access to the work areas. Contractor shall be responsible for maintaining access control for work areas from the time the service or repair starts until the time the work site is returned to its proper condition.

18. CLEANUP:

Prior to requesting a final inspection, the Contractor shall carefully clean up and remove all surplus materials and/or debris of any type resulting from the Contractors' work from the work site, and shall dispose of all of the materials and debris in a proper manner. The work site shall be left clean and neat. _

19. LABOR FORCE AND SUPERVISION:

The Contractor shall provide sufficient labor at all times to carry out the work properly and shall ensure that competent workers who are skilled in the type of work required are employed. The Contractor shall ensure that supervision is provided at all times while any work under this contract is being performed. If, in the judgment of the County, any person is incompetent or disorderly, Contractor shall promptly remove such person from the work for the duration of the contract.

20. CHARACTER OF WORKERS:

If any person employed by the Contractor fails or refuses to carry out the direction of the Technical Liaison, or appears to be incompetent or acts in a disorderly or improper manner, that person shall be discharged immediately from the job on the request of the Technical Liaison or Purchasing Manager, and such person shall not again work on any County job.

21. CONTRACTOR'S RESPONSIBILITY FOR WORK:

Until the formal acceptance of the work by the Technical Liaison, the Contractor shall be responsible for and have care, custody, and control of the work and of the parts, materials, and equipment to be used therein, delivered to the work site. The Contractor shall bear full risk of loss, injury or damage to any part of the work and parts, material or equipment by action of the elements, or from any other cause, whether arising from the execution or non-execution of the work. The Contractor shall rebuild, repair, restore and make whole, all loss or damage to any portion of the work or parts and materials, before final acceptance, and shall bear the expense thereof, except for such loss or damage caused by the acts of the City, State, or Federal Government, or by an act of God as defined in Section 4150 of the California Government Code.

Suspension of work for any cause whatsoever shall not relieve the Contractor of their responsibility for the work or parts and/or materials as required for the work performed.

The Contractor shall be responsible for any damage their activities cause to adjacent public or private property. The Contractor shall take all measures necessary to protect the surrounding area from debris or other damage resultant from the project activities.

22. DELAY BY THE COUNTY:

Any act or omission of any kind by the County, its officers, agents or employees, which causes the Contractor delay in the completion of the work shall be grounds for extension of time on the part of the Contractor to complete the work, but shall give the Contractor no damages for such delay.

23. ADDITIONAL AND EMERGENCY PROTECTION:

Whenever, in the opinion of the Technical Liaison, the Contractor has not taken sufficient precautions for the safety of the public, or property and structures adjacent to the work site, the Technical Liaison may provide suitable protection with or without first notifying the Contractor. The cost and expense of such protection provided by the County shall be borne by the Contractor. The County shall deduct the cost of such protection from any monies due or to become due to the Contractor.

24. VANDALISM AND DAMAGE REPORTS:

The Contractor shall report all vandalism or damage done to the elevators and elevator systems to the County Technical Liaisons as soon as possible.

ATTACHMENT 1

A. Monthly Rates (Initial Term)

Building Name	Address	Price (per mo.)
Admin Annex IV (Old B of A) Clerk-Recorder	1021 I Street, Modesto	\$ 155.00
Admin Annex IV/(Old B of A) Clerk-Recorder	1021 I Street, Modesto	155.00
County Annex VI	801 11th Street, Modesto	325.00
Downtown Jail	1100 I Street, Modesto	400.00
Ag Center	3800 Comucopia Way, Modesto	140.00
Community Services Agency (CSA)	251 E Hackett, Modesto	160.00
Community Services Agency (CSA)	251 E Hackett, Modesto	160.00
Community Services Agency (CSA)	251 E Hackett, Modesto	160.00
Public Safety Center	200 E Hackett, Modesto	140.00
Sheriff's Operation Center	250 E Hackett, Modesto	140.00
Modesto Main Library	1500 I Street, Modesto	165.00
Modesto Main Library	1500 I Street, Modesto	165.00
Modesto Main Library	1500 I Street, Modesto	165.00
Ceres Storage Facility	1900 Memorial Drive, Ceres	135.00
Ceres Storage Facility	1900 Memorial Drive, Ceres	135.00
Health Services Agency - Central	830 Scenic Drive, Modesto	350.00
Health Services Agency - Central	830 Scenic Drive, Modesto	350.00
Health Services Agency - Building 1	830 Scenic Drive, Modesto	300.00
Health Services Agency - Building 2	830 Scenic Drive, Modesto	300.00
Health Services Agency - Hydro	830 Scenic Drive, Modesto	160.00
Health Services Agency - Basement Drum	830 Scenic Drive, Modesto	250.00
Medical Arts Building	700 17th Street, Modesto	140.00
12th Street Office Building	832 12th Street, Modesto	460.00
12th Street Office Building	832 12th Street, Modesto	460.00
12th Street Garage	826 12th Street, Modesto	460.00
12th Street Garage	826 12th Street, Modesto	460.00
Gallo Arts Center	1000 I Street, Modesto	187.00
Gallo Arts Center	1000 I Street, Modesto	187.00
Gallo Arts Center	1000 I Street, Modesto	187.00
TOTAL PER MONTH		\$6,951.00

B. Hourly Service and Repair Rate:

	Hourly Rate	
	Services within Scope of Work	Services outside Scope of Work
Mechanic (straight time)	NO CHARGE	\$281.00
Mechanic (overtime)	\$196.00	\$477.00
Mechanic (holiday)	\$247.00	\$528.00
Team (straight time)	NO CHARGE	\$505.00
Team (holiday)	\$444.00	\$946.00

25. BY-ANNUAL REPORTS:

By-annual reports for all scheduled maintenance and emergency repairs shall be prepared by the Contractor and submitted to the County. The report shall include, but not limited to, the work order number, the manufacturer brand, model number, description and serial number of the equipment serviced and the invoice amount. The report shall total the expenditures for the quarter and by the fiscal year to date. These reports shall be made available upon request.

26. TECHNICAL LIAISON:

Work under any resulting contract shall be performed under the general technical guidance and direction of the County "Technical Liaison(s)". The Technical Liaison is not authorized to commit the County to changes in specifications, requirements, or scope of work, changes in price(s), period of performance or delivery date(s) or method of shipment. Changes of a contractual or business nature shall be effected only by written change to the contract, issued by the City of Modesto, Purchasing Division.

27. CONTRACTOR MARKUP:

The Contractor may apply a markup of ten-percent (10%) on all parts, components or materials used in the furnishing of services and repairs. The markup shall be applied to the Contractor's landed cost, plus sales tax on the landed cost less any earned discounts. The Contractor shall provide the County with a copy of all supplier invoices upon request.

The City of Modesto's Request for Proposal #0910-08; the Contractor's responding proposal; Notice to Proposers; Information for Proposers; General Conditions, as well as any plans, specifications, addenda, and any documents particularly required or provided (as may be applicable), all of which are incorporated herein by reference and made a part hereof (collectively, the "RFP"), together with this Agreement, comprise the contract and all services provided hereunder shall be performed in accordance therewith. In the event there is a conflict between the terms and conditions set forth in this Agreement and those set forth in the RFP, then in such case, the terms and conditions of this Agreement shall prevail.

B. COMPENSATION

The Contractor shall be compensated for the services provided under this Agreement as follows:

1. During the Initial Term of this Agreement, as hereinafter defined, Contractor shall bill County for services hereunder at the rates set forth in Attachment 1. Overtime pay shall be at the rate of at one and seven-tenths (1.7) times the base rate and shall apply to actual work performed on Saturday and Monday through Friday between the hours of 4:30 pm and 8:00 am. Holiday pay shall be at the rate of at two (2.0) times the base rate and shall apply to actual work performed on Sunday and on New Year's Day, Memorial Day, Independence Day, Labor Day, Veterans Day, Thanksgiving Day (including the subsequent Friday), and Christmas Day. Overtime and holiday pay rates are set forth in Attachment 1 and shall only be paid if approved by County in advance between the parties' respective Project Managers or designee. With respect to overtime and holiday pay, Consultant shall manage staffing and schedules so as to eliminate the need for overtime and/or holiday work and charges to the extent possible.

2. During each of the three (3) Extension Terms (as hereinafter defined) of this Agreement Contractor may increase pricing set forth above by an amount not to exceed the Consumer Price Index (CPI) for West Urban Area in any one contract year. Contractor shall submit all requests for price increases in writing, sixty (60) days prior to the annual anniversary date of the contract to be effective for the subsequent year. Thereafter, the parties shall negotiate each such increase.
3. The parties hereto acknowledge the maximum amount to be paid by the County for services provided shall not exceed \$170,000.00 during the Initial Term and approximately \$267,000.00 during the three (3) Extension Terms for an estimated total maximum of \$437,000.00 over the duration of this Agreement. This amount includes, without limitation, the cost of any subcontractors, consultants, experts or investigators retained by the Contractor to perform or to assist in the performance of its work under this Agreement.
3. Consultant shall submit monthly invoices in arrears for services under this Agreement as follows:
 - Stanislaus County – GSA Facilities Maintenance Division
 - Attn: Accounts Payable
 - 1010 10th Street, Suite 5400
 - Modesto, CA 95354

C. TERM

Paragraph 3.1 of the body of this Agreement is amended to read as follows:

3.1 The term of this Agreement shall be from September 1, 2010 through June 30, 2012 (the "Initial Term") unless otherwise terminated as provided below, during which time pricing shall remain firm. Thereafter, this Agreement will not automatically renew but may be renewed for three (3) additional one-year terms (each a "Renewal Term") by mutual, written agreement of the parties. Price increases for each Renewal Term shall not exceed the Consumer Price Index (CPI) for West Urban Area in any Renewal Term and shall be negotiated by the parties. Such renewal shall be in the form of an amendment to the Agreement as described in Section 17 of the body of this Agreement.

Paragraph 3.4 of the body of this Agreement is amended to read as follows:

3.4 Either party may terminate this agreement upon thirty (30) days prior written notice to the other. Termination of this Agreement shall not affect the County's obligation to pay for all fees earned and reasonable costs necessarily incurred by the Contractor as provided in Paragraph 2 herein, subject to any applicable setoffs.

D. INSURANCE

Paragraph 6.3 of the body of this agreement is amended to read as follows:

6.3 The Contractor shall obtain a specific endorsement to all required insurance policies, except Workers' Compensation insurance and Professional Liability insurance, if any, naming the County and its officers, officials and employees as additional insureds for defense and indemnity only regarding: (a) liability arising from or in connection with the performance or omission to perform any term or condition of this Agreement by or on behalf of the Contractor,

including the insured's general supervision of its subcontractors; (b) services, products and completed operations of the Contractor; (c) premises owned, occupied or used by the Contractor; and (d) automobiles owned, leased, hired or borrowed by the Contractor. The additional insured coverage specifically excludes actions arising from County's own acts, actions, omissions, neglects or for unproved allegations. For Workers' Compensation insurance, the insurance carrier shall agree to waive all rights of subrogation against the County and its officers, officials and employees for losses arising from the performance of or the omission to perform any term or condition of this Agreement by the Contractor.

E. INDEMNIFICATION

Paragraph 7.1 of the body of this Agreement is amended to read as follows:

7.1 To the fullest extent permitted by law, Contractor shall indemnify, hold harmless and defend the County and its agents, officers and employees from and against all claims, damages, losses, judgments, liabilities, expenses and other costs, including litigation costs and attorneys' fees, arising out of, resulting from, or in connection with the performance of this Agreement by the Contractor or Contractor's officers, employees, agents, representatives or subcontractors and resulting in or attributable to personal injury, death, or damage or destruction to tangible or intangible property, including the loss of use; provided, however, such indemnification shall not extend to or cover loss, damage or expense arising from the sole negligence or willful misconduct of the County or its agents, officers and employees. Contractor's obligation to indemnify and hold County harmless is limited solely to losses to the extent caused by Contractor's acts, actions, omissions or neglects and in no way includes the acts, actions, omissions of the County.

E. REPRESENTATIVES

The County's Project Manager shall be:

For County:

Bob Carpenter, Facilities Manager
Stanislaus County
GSA Facilities Maintenance Division
1010 10th Street, Suite B-460
Modesto, CA 95354
(209) 650-0670

For Contractor:

Paul Taormina, Sr. Service Representative
ThyssenKrupp Elevator Corp.
940 Riverside Parkway, Suite 20
West Sacramento, CA 95605
916-825-5113