

FIRST AMENDMENT TO AGREEMENT FOR SERVICES

This FIRST AMENDMENT TO AGREEMENT is dated for identification this 18th day of February 2020 and amends that certain agreement for Agreement for Services dated July 1, 2018, made by and between the Town of Los Gatos, ("Town,") and Elevator Service Company of Central CA, Inc. ("Service Provider").

RECITALS

- A. Town and Service Provider entered into an Agreement for Services on July 1, 2018, ("Agreement"), a copy of which is attached hereto and incorporated by reference as Exhibit A to this Amendment.
- B. Town desires to amend the Agreement for Services to increase compensation for the Scope of Services.

AMENDMENT

1. 2.6 Compensation is amended as described below:

Original Agreement

	Preventative	Unforeseen
FY2018/19:	\$825 x 12 months (\$9,900) +	\$5,000 annually = \$14,900
FY2019/20:	\$825 x 12 months (\$9,900) +	\$5,000 annually = \$14,900
FY2020/21:	\$825 x 12 months (\$9,900) +	\$5,000 annually = \$14,900

Total agreement not to exceed \$44,700

Effective March 1, 2020:

First Amendment to Agreement

	Preventative	Unforeseen
FY2018/19:	\$825 x 12 months (\$9,900) +	\$5,000 annually = \$14,900
FY2019/20:	\$825 x 12 months (\$9,900) +	\$12,190 annually = \$22,090
FY2020/21:	\$825 x 12 months (\$9,900) +	\$12, 190 annually = \$22,090

Total agreement not to exceed \$59,080

Compensation for year two shall not exceed \$22,090. Compensation for future years will be the base cost of \$22,090 and shall be adjusted upward annually for the remaining term of this agreement by the change, if any, in the San Francisco-Oakland-San Jose Metropolitan Area Consumer Price Index for All Urban Consumers, all items (CPI). The adjustment shall be based upon the CPI published on December 31 of the preceding year. If the CPI indicates a downward adjustment, compensation would remain at the base amount. Payment shall be based upon Town approval of each task.

2. All other terms and conditions of the Agreement remain in full force and effect.

IN WITNESS WHEREOF, the Town and Service Provider have executed this Amendment.

Town of Los Gatos

Service Provider by:

By: _____
Laurel Prevetti, Town Manager

Department Approval:

Name/Title

Matt Morley
Director of Parks and Public Works

Approved as to Form:

Attest:

Robert Schultz, Town Attorney

Shelley Neis, MMC, Town Clerk

AGREEMENT FOR SERVICES

THIS AGREEMENT is dated for identification this 1st of July 2018, and is made by and between TOWN OF LOS GATOS, a California municipal corporation, ("Town") and Elevator Service Company of Central California, Inc. ("Service Provider"), whose address is 2636 S. Rodeo Gulch Road B, Soquel, CA 95073. This Agreement is made with reference to the following facts.

I. RECITALS

- 1.1 Town sought quotations for the services described in this Agreement, and Service Provider was found to be the lowest responsible supplier for this purchase.
- 1.2 Service Provider represents and affirms that it is willing to perform the desired work pursuant to this Agreement.
- 1.3 Town desires to engage Service Provider to provide Traction and Hydraulic Elevator Lubrication and Inspection services.
- 1.4 Service Provider warrants it possesses the distinct professional skills, qualifications, experience, and resources necessary to timely perform the services described in this Agreement. Service Provider acknowledges Town has relied upon these warranties to retain Service Provider.

II. AGREEMENT

- 2.1 Scope of Services. Service Provider shall provide services as described in that certain Proposal sent to the Town on June 28, 2018, which is hereby incorporated by reference and attached as Exhibit A.
- 2.2 Term and Time of Performance. The effective date of this Agreement shall begin on July 1, 2018 and will continue through June 30, 2021, subject to appropriation of funds, notwithstanding any other provision in this agreement.
- 2.3 Compliance with Laws. The Service Provider shall comply with all applicable laws, codes, ordinances, and regulations of governing federal, state and local laws. Service Provider represents and warrants to Town that it has all licenses, permits, qualifications and approvals of whatsoever nature which are legally required for Service Provider to practice its profession. Service Provider shall maintain a Town of Los Gatos business license pursuant to Chapter 14 of the Code of the Town of Los Gatos.
- 2.4 Sole Responsibility. Service Provider shall be responsible for employing or engaging all persons necessary to perform the services under this Agreement.
- 2.5 Information/Report Handling. All documents furnished to Service Provider by the Town and all reports and supportive data prepared by the Service Provider under this Agreement are the Town's property and shall be delivered to the Town upon the completion of services or at the

Town's written request. All reports, information, data, and exhibits prepared or assembled by Service Provider in connection with the performance of its services pursuant to this Agreement are confidential until released by the Town to the public, and the Service Provider shall not make any of these documents or information available to any individual or organization not employed by the Service Provider or the Town without the written consent of the Town before such release. The Town acknowledges that the reports to be prepared by the Service Provider pursuant to this Agreement are for the purpose of evaluating a defined project, and Town's use of the information contained in the reports prepared by the Service Provider in connection with other projects shall be solely at Town's risk, unless Service Provider expressly consents to such use in writing. Town further agrees that it will not appropriate any methodology or technique of Service Provider which is and has been confirmed in writing by Service Provider to be a trade secret of Service Provider.

2.6 Compensation:

Preventative maintenance – shall not exceed \$9,900 annually (\$825/month). ✓

Unanticipated maintenance – shall not exceed \$5,000 annually. ✓

Compensation for year one shall not exceed \$14,900. ✓ Compensation for future years will be the base cost of \$14,900 and shall be adjusted upward annually for the remaining term of this agreement by the change, if any, in the San Francisco-Oakland-San Jose Metropolitan Area Consumer Price Index for All Urban Consumers, all items (CPI). The adjustment shall be based upon the CPI published on December 31 of the preceding year. If the CPI indicates a downward adjustment, compensation would remain at the base amount. Payment shall be based upon Town approval of each task.

2.7 Billing. Billing shall be monthly by invoice within thirty (30) days of the rendering of the service and shall be accompanied by a detailed explanation of the work performed by whom at what rate and on what date. Also, plans, specifications, documents or other pertinent materials shall be submitted for Town review, even if only in partial or draft form.

Payment shall be net thirty (30) days. All invoices and statements to the Town shall be addressed as follows:

Invoices:

Town of Los Gatos

Attn: Accounts Payable

P.O. Box 655

Los Gatos, CA 95031-0655

2.8 Availability of Records. Service Provider shall maintain the records supporting this billing for not less than three years following completion of the work under this Agreement. Service Provider shall make these records available to authorized personnel of the Town at the Service Provider offices during business hours upon written request of the Town.

- 2.9 Assignability and Subcontracting. The services to be performed under this Agreement are unique and personal to the Service Provider. No portion of these services shall be assigned or subcontracted without the written consent of the Town.
- 2.10 Independent Contractor. It is understood that the Service Provider, in the performance of the work and services agreed to be performed, shall act as and be an independent contractor and not an agent or employee of the Town. As an independent contractor he/she shall not obtain any rights to retirement benefits or other benefits which accrue to Town employee(s). With prior written consent, the Service Provider may perform some obligations under this Agreement by subcontracting, but may not delegate ultimate responsibility for performance or assign or transfer interests under this Agreement. Service Provider agrees to testify in any litigation brought regarding the subject of the work to be performed under this Agreement. Service Provider shall be compensated for its costs and expenses in preparing for, traveling to, and testifying in such matters at its then current hourly rates of compensation, unless such litigation is brought by Service Provider or is based on allegations of Service Provider's negligent performance or wrongdoing.
- 2.11 Conflict of Interest. Service Provider understands that its professional responsibilities are solely to the Town. The Service Provider has and shall not obtain any holding or interest within the Town of Los Gatos. Service Provider has no business holdings or agreements with any individual member of the Staff or management of the Town or its representatives nor shall it enter into any such holdings or agreements. In addition, Service Provider warrants that it does not presently and shall not acquire any direct or indirect interest adverse to those of the Town in the subject of this Agreement, and it shall immediately disassociate itself from such an interest, should it discover it has done so and shall, at the Town's sole discretion, divest itself of such interest. Service Provider shall not knowingly and shall take reasonable steps to ensure that it does not employ a person having such an interest in this performance of this Agreement. If after employment of a person Service Provider discovers it has employed a person with a direct or indirect interest that would conflict with its performance of this Agreement Service Provider shall promptly notify Town of this employment relationship, and shall, at the Town's sole discretion, sever any such employment relationship.
- 2.12 Equal Employment Opportunity. Service Provider warrants that it is an equal opportunity employer and shall comply with applicable regulations governing equal employment opportunity. Neither Service Provider nor its subcontractors do and neither shall discriminate against persons employed or seeking employment with them on the basis of age, sex, color, race, marital status, sexual orientation, ancestry, physical or mental disability, national origin, religion, or medical condition, unless based upon a bona fide occupational qualification pursuant to the California Fair Employment & Housing Act.

III. INSURANCE AND INDEMNIFICATION

3.1 Minimum Scope of Insurance:

- i. Service Provider agrees to have and maintain, for the duration of the contract, General Liability insurance policies insuring him/her and his/her firm to an

amount not less than: one million dollars (\$1,000,000) combined single limit per occurrence for bodily injury, personal injury and property damage.

- ii. Service Provider agrees to have and maintain for the duration of the contract, an Automobile Liability insurance policy ensuring him/her and his/her staff to an amount not less than one million dollars (\$1,000,000) combined single limit per accident for bodily injury and property damage.
- iii. Service Provider shall provide to the Town all certificates of insurance, with original endorsements effecting coverage. Service Provider agrees that all certificates and endorsements are to be received and approved by the Town before work commences.

General Liability:

- i. The Town, its officers, officials, employees and volunteers are to be covered as insured as respects: liability arising out of activities performed by or on behalf of the Service Provider; products and completed operations of Service Provider, premises owned or used by the Service Provider.
- ii. The Service Provider's insurance coverage shall be primary insurance as respects the Town, its officers, officials, employees and volunteers. Any insurance or self-insurances maintained by the Town, its officers, officials, employees or volunteers shall be excess of the Service Provider's insurance and shall not contribute with it.
- iii. Any failure to comply with reporting provisions of the policies shall not affect coverage provided to the Town, its officers, officials, employees or volunteers.
- iv. The Service Provider's insurance shall apply separately to each insured against whom a claim is made or suit is brought, except with respect to the limits of the insurer's liability.

3.2 All Coverages. Each insurance policy required in this item shall be endorsed to state that coverage shall not be suspended, voided, cancelled, reduced in coverage or in limits except after thirty (30) days' prior written notice by certified mail, return receipt requested, has been given to the Town. Current certification of such insurance shall be kept on file at all times during the term of this agreement with the Town Clerk.

3.3 Workers' Compensation. In addition to these policies, Service Provider shall have and maintain Workers' Compensation insurance as required by California law and shall provide evidence of such policy to the Town before beginning services under this Agreement. Further, Service Provider shall ensure that all subcontractors employed by Service Provider provide the required Workers' Compensation insurance for their respective employees.

- 3.4 Indemnification. The Service Provider shall save, keep, hold harmless and indemnify and defend the Town its officers, agent, employees and volunteers from all damages, liabilities, penalties, costs, or expenses in law or equity that may at any time arise or be set up because of damages to property or personal injury received by reason of, or in the course of performing work which may be occasioned by a willful or negligent act or omissions of the Service Provider, or any of the Service Provider's officers, employees, or agents or any subcontractor.

IV. GENERAL TERMS

- 4.1 Waiver. No failure on the part of either party to exercise any right or remedy hereunder shall operate as a waiver of any other right or remedy that party may have hereunder, nor does waiver of a breach or default under this Agreement constitute a continuing waiver of a subsequent breach of the same or any other provision of this Agreement.
- 4.2 Governing Law. This Agreement, regardless of where executed, shall be governed by and construed to the laws of the State of California. Venue for any action regarding this Agreement shall be in the Superior Court of the County of Santa Clara.
- 4.3 Termination of Agreement. The Town and the Service Provider shall have the right to terminate this agreement with or without cause by giving not less than fifteen days (15) written notice of termination. In the event of termination, the Service Provider shall deliver to the Town all plans, files, documents, reports, performed to date by the Service Provider. In the event of such termination, Town shall pay Service Provider an amount that bears the same ratio to the maximum contract price as the work delivered to the Town bears to completed services contemplated under this Agreement, unless such termination is made for cause, in which event, compensation, if any, shall be adjusted in light of the particular facts and circumstances involved in such termination.
- 4.4 Prevailing Wages. In accordance with the provisions of Sections 1770 et seq., of the Labor Code, the Director of the Industrial Relations of the State of California has determined the general prevailing rate of wages applicable to the work to be done. Service Provider will be required to pay to all persons employed on the project by the Service Provider sums not less than the sums set forth in the documents entitled "General Prevailing Wage Determination made by the Director of Industrial Relations pursuant to California Labor Code, part 7, Chapter 1, Article 2, Sections 1770, 1773, 1773.1." These documents may be obtained from the State of California.

Pursuant to Labor Code section 1725.5, no contractor or subcontractor may be awarded a contract for public works on a public works project unless registered with the Department of Industrial Relations.

This project is subject to compliance monitoring and enforcement by the Department of Industrial Relations and/or the Town of Los Gatos.

The Contractor is required to post notices on Public Works requirements.

- 4.5 Amendment. No modification, waiver, mutual termination, or amendment of this Agreement is effective unless made in writing and signed by the Town and the Service Provider.
- 4.6 Disputes. In any dispute over any aspect of this Agreement, the prevailing party shall be entitled to reasonable attorney's fees, including costs of appeal.
- 4.7 Notices. Any notice required to be given shall be deemed to be duly and properly given if mailed postage prepaid, and addressed to:

Town of Los Gatos
Attn: Town Clerk
110 E. Main Street
Los Gatos, CA 95030

Elevator Service Co. of Central CA, Inc.
2636 S. Rodeo Gulch Road B
Soquel, CA 95073

or personally delivered to Service Provider to such address or such other address as Service Provider designates in writing to Town.

- 4.8 Order of Precedence. In the event of any conflict, contradiction, or ambiguity between the terms and conditions of this Agreement in respect of the Products or Services and any attachments to this Agreement, then the terms and conditions of this Agreement shall prevail over attachments or other writings.
- 4.9 Entire Agreement. This Agreement, including all Exhibits, constitutes the complete and exclusive statement of the Agreement between the Town and Service Provider. No terms, conditions, understandings or agreements purporting to modify or vary this Agreement, unless hereafter made in writing and signed by the party to be bound, shall be binding on either party.

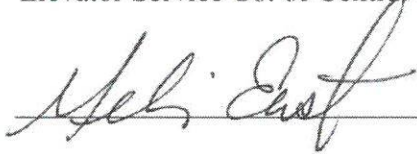
IN WITNESS WHEREOF, the Town and Service Provider have executed this Agreement.

Town of Los Gatos by:

Elevator Service Co. of Central CA, Inc., by:



Laurel Prevetti, Town Manager

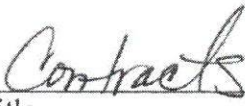


Mel East

Recommended by:




Matt Morley, Director of Parks and Public Works



Title

Approved as to Form:



Robert Schultz, Town Attorney

Attest:

 9/27/18

Shelley Neis, CMC, Town Clerk Administrator

ELEVATOR SERVICE CO. OF CENTRAL CALIFORNIA, INC.

2636 S. RODEO GULCH RD. SOQUEL CA 95131-475-9181 LIC 390181



TRACTION AND HYDRAULIC ELEVATOR LUBRICATION & INSPECTION AGREEMENT

DATED: June 28, 2018

TO: Town of Los Gatos
Parks and Public Works Department
41 Miles Avenue
Los Gatos, CA 95030

Attn: Jim Harbin

WE PROPOSE to Lubricate and Inspect on the following described equipment:

Two (3) Oil Hydraulic Passenger Elevators, One (1) Dumbwaiter and Two (2) Traction Passenger Elevators

AT: (2) Tractions	(2) Hydraulic Elevator, (1) Dumbwaiter	(1) Hydraulic Elevator
100 Villa Ave.	110 E. Main St.	208 Main St.
Los Gatos, CA	Los Gatos, CA	Los Gatos, CA

ESCCC and Purchaser, in consideration of the terms set forth herein, agree as follows:

CONTRACT PRICE:

Eight Hundred Twenty-Five Dollars and 00/100 cents (\$825.00) per month

UNDER THIS AGREEMENT

We will maintain the equipment herein described on the following terms and conditions:

WE WILL USE:

Trained personnel directly employed and supervised by us.

WE WILL:

Regularly examine and lubricate as requires; bearing; hydraulic and traction machines, selectors, governors, tension frame sheaves, signal devices, interlocks and controller. We will also examine and lubricate as required car and counterweight guide rails and make necessary minor adjustments, not requiring disassembly of the unit, at the time of our regular examination. We will furnish the necessary oils and greases, with the exception of hydraulic transmission fluid. Perform monthly fire recall test and logs.

NO WORK:

Parts or supplies, except those specified herein, will be furnished under this agreement. All work is to be performed during regular working hours of regular working days of the elevator trade. In the event that call back service, parts replacement or repairs should be required, you will be billed for labor and material at our regular billing rate.

IT IS AGREED:

In consideration of our performance of the service enumerated herein at the price stated, that nothing shall be construed to mean that we assume any liability on account of accidents or injury to persons or property, except those directly due to our negligent acts or omissions or those of our employees; and that

ELEVATOR SERVICE CO. OF CENTRAL CALIFORNIA, INC.

2636 S. RODEO GULCH RD. SOQUEL CA 831-475-9181 LIC 390181

your own responsibility for accidents or injuries to persons or property related to the subject equipment is in no way affected by this agreement.

We shall not be liable for any loss, damage or delay due to any cause beyond our reasonable control including, but not limited to acts of government, strikes, lockouts, fire, explosion, theft, floods, earthquake, riot, civil commotion, war, malicious mischief, misuse, or acts of nature.

YOU AGREE:

To give us written notice within twenty-four hours of any accident, alteration or change affecting the equipment and of any change of ownership;

To immediately discontinue the equipment from service when the equipment becomes unsafe or operates in a manner which might cause injury to a user;

To maintain surveillance of the equipment for such purpose.

HOURS OF SERVICE:

All work covered under this Agreement is to be performed during the regular working hours of regular working days of the elevator trade, unless otherwise indicated herein.

TERM:

The service specified will be furnished from the effective date stated herein, and shall continue for an initial, non-cancelable term of ONE (1) year thereafter. Either party may terminate this Agreement either at the end of the initial ONE (1) year term or at the end of any subsequent ONE (1) year term by giving the other party ninety (90) days written notice, via certified mail, prior to the expiration date of the Agreement, the expiration date being ONE (1) year from the effective date of this Agreement or ONE (1) year from the effective date of any subsequent renewal term.

RWS
~~Premature cancellation of this Agreement or delayed notice of termination shall constitute a material breach of contract and the entire remaining amount of the contract will accelerate and become due to ESCCC as liquidated damages. In the event of the sale, lease or other transfer of the ownership of the equipment described herein, or the premises in which it is located, Purchaser will provide ESCCC with thirty (30) days written notice of this transaction and Purchaser will notify the new Purchaser of the existence of this Agreement and provide ESCCC with the new Purchaser's complete contract information.~~

ESCCC may, at its sole discretion, temporarily suspend upon written notice or terminate entirely upon thirty (30) days written notice this Agreement at any time due to the Purchaser's breach of contract. In the event of circumstances presenting a safety hazard to the riding public or ESCCC's technicians (including, but not limited to, Purchaser's act of creating or allowing unsafe practices or conditions or Purchaser's failure to authorize necessary repairs or upgrades), ESCCC may immediately terminate this Agreement in its entirety upon written notice.

PRICE ADJUSTMENTS:

The price will be adjusted annually on January 1 of each year of the Agreement. The payment adjustment will reflect the increase or decrease in labor costs.

Current Hourly Rate: \$325.00 As of January 2018

LABOR:

100% of the current price will be increased or decreased by the percent increase or decrease in the straight time hourly labor cost. The straight time labor cost is the sum of the straight time hourly rate plus the cost of fringe benefits (including but not limited to welfare, pension, vacations, paid holidays, insurance, and other union contributions) paid to elevator examiners in the locality the equipment is maintained.

ESCCC:

Reserves the right to additionally adjust the contract price under extraordinary circumstances if the cost of fuel (based on the Producer Price Index of Commodities for Gasoline), insurance or other administrative expenses increase.

ELEVATOR SERVICE CO. OF CENTRAL CALIFORNIA, INC.

2636 S. RODEO GULCH RD. SOQUEL CA 95076-1811 LIC 390181

PAYMENT TERMS:

Payments are due within ten (10) days of date of invoice. A delinquent payment charge of 1½ % per month, or if such rate is usurious then at the maximum rate under applicable law, shall be applied to delinquent payments. In the event of default of the payment terms, Purchaser agrees to pay the defaulted amount, all attorney fees, collection, and court costs. Failure to pay any sum due by Purchaser within sixty (60) days will be a material breach. ESCCC may declare all sums due or to become due for the unexpired term immediately due and payable as liquidated damages, and until the same are paid, ESCCC may suspend service, and be discharged from further obligations under the contract. If ESCCC exercises its right to suspend service, ESCCC shall not be responsible for injury or damage resulting from the lack of service. When service is resumed, Purchaser will be responsible for any costs ESCCC incurs as a result of the lapse in service, including inspection and repairs.

These payment terms shall also be applicable to any charges for work outside the scope of this Agreement.

THIS SERVICE SHALL COMMENCE on the _____ day of _____ 2018.

PURCHASER:

Elevator Service Co. of Central California, Inc.:

Accepted in Duplicate:

By: _____ 20_____

By:



Melissa Eastman / Contract Specialist

Title

Approved:

By: _____