AMENDMENT NO 4
TO
THYSSENKRUPP ELEVATOR
PLATINUM MAINTENANCE AGREEMENT

This Amendment is entered into this 1st day of July 2010, by and between the City of Milpitas, a municipal corporation of the State of California (hereafter referred to as "CITY") and **THYSSENKRUPP ELEVATOR**, (hereafter referred to as "CONSULTANT").

RECITALS

WHEREAS, the parties entered into an annual automatically renewing agreement for elevator maintenance, on 7/01/05; and

WHEREAS, the parties desire to amend the quarterly service charges as per the "Annual Price Adjustment" section on page 6; and

NOW THEREFORE, in consideration of the mutual covenants and conditions herein contained, the parties agree to amend the agreement as follows:

1. Per the attached price quote from Account Manager, Tara Fitzsimmons, dated 5/8/10, the quarterly services charges shall be as follows:

City Hall	$ 2,446.23/quarter
Police and Public Works	$ 2,466.62/quarter

2. The contract shall be amended to include "incidental services and repairs" as may be necessary and are not otherwise covered as maintenance under the contract. Hourly rates for same are attached as "Attachment A". The amount for which shall not exceed $13,000.00 annually.

3. All other provisions of the agreement shall remain in full force and effect.

This Amendment is executed as of the date written above.

APPROVED BY:

CITY OF MILPITAS

Chris Schroeder
City Purchasing Agent as to Content

City Attorney as to Form

City Manager

THYSSENKRUPP ELEVATOR

ROBBIE ELROD
CONTRACT ANALYST

City Risk Manager

ThyssenKrupp Elevator

May 8, 2009

Attn: Bart Damele
City of Milpitas
455 E. Calaveras Blvd.
Milpitas, CA 95035

Re: Elevator Maintenance Budget for City of Milpitas

Dear Bart,

Per your request, the elevator maintenance cost from July 1, 2010 through June 30, 2011 will be as follows:

455 E. Calaveras Blvd: $9,784.92
1265 & 1275 N. Milpitas Blvd.: $9,866.48

Should you have any questions or concerns, please don't hesitate to call me. Thank you.

Sincerely,

Tara Fitzsimmons
Account Manager
ThyssenKrupp Elevator
2140 Zanker Road
San Jose, CA 95131

ThyssenKrupp Elevator Corporation
2140 Zanker Road
San Jose, CA 95131
Telephone: 408-660-1506
Fax: 866-774-1915
E-mail: tara.fitzsimmons@thyssenkrupp.com
Internet: www: thyssenkruppelevator.com

ATTACHMENT A
BILLING RATE SHEET (Effective 1-1-10)

Service Requests		Platinum Premier Full Maintenance (FMC)	Platinum Full Maintenence (FMTD)	Gold Full Maintenance (FM)	Bronze Oil and Grease (OG)
Contract Items Regular Hours 8:00AM - 4:30PM Monday- Friday	**Mechanic**	***Included***	***Included***	***Included***	**$316/ hr**
	Team	***Included***	***Included***	***Included***	**$569/ hr**
Contract Items After Hours Monday - Saturday	**Mechanic** (1.7)	***Included***	**$221/ hr**	**$537/ hr**	**$537/ hr**
	Team (2.0)	***Included***	**$569/ hr**	**$569/ hr**	**$569/ hr**
Contract Items Double Time Sunday & Holidays	**Mechanic** (2.0)	***Included***	**$316/ hr**	**$632/ hr**	**$632/ hr**
	Team (2.0)	***Included***	**$569/ hr**	**$569/ hr**	**$1,138/ hr**
Non-Contract items Regular Hours	**Mechanic**	**$316/ hr**	**$316/ hr**	**$316/ hr**	**$316/ hr**
	Team	**$569/ hr**	**$569/ hr**	**$569/ hr**	**$569/ hr**
Non-Contract items After Hours	**Mechanic** (1.7)	**$537/ hr**	**$537/ hr**	**$537/ hr**	**$537/ hr**
	Team (2.0)	**$1,138/ hr**	**$1,138/ hr**	**$1,138/ hr**	**$1,138/ hr**
Non-Contract items Sunday & Holidays	**Mechanic** (2.0)	**$632/ hr**	**$632/ hr**	**$632/ hr**	**$632/ hr**
	Team (2.0)	**$1,138/ hr**	**$1,138/ hr**	**$1,138/ hr**	**$1,138/ hr**

The above rates are subject to annual adjustment each calendar year based upon the percentage change in the labor wage rates including fringe benefits paid to the local examiners in the area in which the equipment is located.

Purchaser: City Of Milpitas
455 E. Calaveras Blvd.
Milpitas, CA 95035

Location: City of Milpitas
Various locations
Addresses listed below

By: ThyssenKrupp Elevator Corporation
2140 Zanker Road
San Jose, CA 95131
Telephone: (408) 392-0910
Fax: (408) 392-0920
E-Mail: tara.fitzsimmons@thyssenkruppelevator.com
Internet: www.thyssenkruppelevator.com

PLATINUM MAINTENANCE AGREEMENT

ThyssenKrupp Elevator agrees to maintain Purchaser's elevator equipment as outlined in this agreement. We will endeavor to provide a comprehensive maintenance program to maximize the performance, safety, and life span of your equipment.

Units To Be Maintained

Building Name	Unit Quantity	Manufacturer	Type of Unit	Unit ID or Serial #	Number of Floors
City Of Milpitas - City Hall 455 E. Calaveras Blvd. Milpitas, CA	1	TKE	Traction Passenger	#124113	5
City of Milpitas - City Hall 455 E. Calaveras Blvd. Milpitas, CA	1	TKE	Hydraulic Passenger	#124112	4
Police Dept. & Public Works 1265 & 1275 N. Milpitas Blvd. Milpitas, CA	1	Dover	Hydraulic Passenger	#97374	2
Police Dept. & Public Works 1265 & 1275 N. Milpitas Blvd. Milpitas, CA	1	Dover	Hydraulic Passenger	#97373	3
Police Dept. & Public Works 1265 & 1275 N. Milpitas Blvd. Milpitas, CA	1	Dover	Hydraulic Freight	#97375	2

Police Dept. & Public Works 1265 & 1275 N. Milpitas Blvd. Milpitas, CA	1	MECA	Chairlift	#102800	2

Preventative Maintenance Program

- Examine your elevator equipment for optimum operation.
  - Control and landing positioning systems
  - Signal fixtures
  - Machines, drives, motors, governors, sheaves, and ropes
  - Power units, pumps, valves, and jacks
  - Car and hoistway door operating devices and door protection equipment
  - Loadweighers, car frames and platforms, and counterweights
  - Safety mechanisms
- Lubricate equipment for smooth and efficient performance.
- Adjust elevator parts and components to maximize performance and safe operation.
- Document all work performed on Maintenance Tasks & Records logs provided with each controller.

Full Coverage Parts Replacement

- Relamp all signals as required (during regularly scheduled visits).
- Repair or replace components worn due to normal wear. Refer to "Other Considerations" section for items not covered.

Quality Assurance

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

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

Annual Safety Testing

Test equipment as outlined in the American National Standard Safety Code for Elevators and Escalators, ANSI A17.1, current edition as of the date this agreement begins. We will perform governor and safety tests on traction elevators once per year and relief pressure tests on hydraulic elevators once per year. You agree to pay for any costs of the inspector or inspection fees.

Service Hours & Service Requests During Normal Working Hours

We will visit your elevators on a regularly scheduled basis. These visits will be performed during normal business hours, Monday through Friday, 8:00 am to 4:30 pm (except scheduled holidays). We will respond to service requests during these hours at no extra charge. Service requests are defined as minor adjustments or emergency entrapments that can be accomplished in two hours or less (excluding travel time).

After Hours Service Requests

On service requests outside of normal business hours for services covered under this Agreement, we will absorb the straight time costs of labor, and you will be responsible for the difference between the straight time costs and overtime costs of labor. Labor costs include travel time, travel expenses, and time spent on the job.

☐ **VIEW®** (Check box if included)

VIEW is ThyssenKrupp Elevator's customer oriented, online service activity reporting system. VIEW allows building owners and managers to monitor ThyssenKrupp's maintenance and service call activity. VIEW can be accessed via the Internet any time, day or night. You can 'VIEW' service tickets associated with a single elevator, for all the elevators at the location being serviced, or across an entire portfolio. Special considerations regarding VIEW are set forth below.

☐ **VISTA®** (Check box if included)

VISTA Remote Monitoring is ThyssenKrupp Elevator's exclusive service for monitoring the status and performance of your elevator(s). VISTA monitors compatible equipment 24 hours a day, 7 days per week, 365 days per year. Constantly monitoring performance data on your equipment provides ThyssenKrupp Elevator the ability to respond to operational irregularities quicker and more efficiently. With VISTA, we can often dispatch a service technician to your location before any interruption in elevator service occurs. Service visits based on VISTA data will be made during normal business hours of normal business days. Special considerations regarding VISTA are set forth below.

☐ **SoundNet®** (Check box if included)

SoundNet is ThyssenKrupp Elevator's 24-hour phone monitoring and emergency call service. Call representatives are trained to handle elevator calls; they can assess the situation and quickly dispatch a technician when necessary. If needed, they can stay on the line to reassure a stranded passenger that help is on the

way. SoundNet maintains a computerized and hard copy record of time, date, and location of calls received and action taken for the benefit of passengers and building owners. Special considerations regarding SoundNet are set forth below.

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

Safety. You agree to instruct or warn passengers in the proper use of the equipment and to keep the equipment under continued surveillance by competent personnel to detect irregularities between elevator examinations. You agree to report immediately any condition that may indicate the need for correction before the next regular examination. You agree to shut down the equipment immediately upon manifestation of any irregularities in operation or appearance of the equipment, notify us at once, and keep the equipment shut down until the completion of any repairs. You agree to give us verbal notice immediately and written notice within ten (10) days after any occurrence or accident in or about the elevator. You agree to provide our personnel a safe place in which to work. We reserve the right to discontinue work in the building whenever, in our sole opinion, our personnel do not have a safe place in which to work. You agree to provide a suitable machine room including secured doors, waterproofing, lighting, ventilation and heat to maintain the room at a temperature of 50°F minimum to 90°F maximum. You also agree to maintain the elevator pit in a dry condition at all times. Should water or other liquids become present, you will contract with others for removal and the proper handling of such liquids.

Other. You agree not to permit others to make alterations, additions, adjustments, or repairs or replace any component or part of the equipment during the term of this agreement. You agree to accept our judgment as to the means and methods to be employed for any corrective work under this agreement, including that you agree if ThyssenKrupp Elevator's inspection of a piece of equipment serviced under this Agreement reveals an operational problem which jeopardizes the safety of the riding public, ThyssenKrupp Elevator may shut down the equipment until such time as the operational problem is resolved. ThyssenKrupp Elevator will immediately advise you in writing of such action, the reason for such action, and whether the proposed solution is covered by the terms of this agreement. In the event of the sale, lease or other transfer of the elevator(s) or equipment described herein, or the premises in which they are located, you agree to see that such successor is made aware of this agreement and assumes and agrees to be bound by the terms hereof for the balance of the agreement, and subject to termination as herein provided, or otherwise be liable for the full unpaid balance due for the full unexpired term of the agreement.

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

Insurance. You ~~expressly agree~~ to name ThyssenKrupp Elevator as an additional insured in your liability and any excess (umbrella) liability insurance policy(ies). ~~Such insurance~~ must insure us for those claims or losses referenced in the above paragraph, and for claims or losses arising from the sole ~~negligence of ThyssenKrupp Elevator or our employees. You hereby waive the right of subrogation.~~

Items not covered. We do not cover cosmetic, construction, or ancillary components of the elevator system, including the finishing, repairing, or replacement of the cab enclosure, ceiling frames, panels, and/or fixtures, hoistway door panels, door frames, sills, car flooring, floor covering, lighting fixtures, ceiling light bulbs and tubes, main line power switches, breaker(s), feeders to controller, hydraulic elevator jack outer casing, buried piping, alignment of elevator guide rails, smoke and fire sensors, fire service reports, communication devices, security systems not installed by us, batteries for emergency lighting and lowering, air conditioners, heaters, ventilation fans and all other items as set forth and excluded in this agreement. 5-Year Load Tests are not included.

Other conditions. With the passage of time, equipment technology and designs will change. We will not be required to make any changes or recommendations in the existing design or function of the unit(s). We shall not be obligated to service, make renewals or repairs upon the equipment by reason of obsolescence, misuse of the equipment, another's negligence, loss of power, blown fuse(s), tripped stop switch(es), theft, vandalism, explosion, fire, power failure, water damage, storm, lightning, nuisance calls, acts of civil or military authorities, strikes, lockouts, acts of God, or any other reason or cause beyond our control. In the event any component of the elevator becomes obsolete or outmoded, or is no longer manufactured by the original manufacturer, it shall be your obligation to replace the obsolete or outmoded component at your expense. We will not be obligated to install new attachments or parts upon the equipment as recommended or directed by insurance companies, any governmental agency or authority, or any third party.

Should your system require any of the safety tests on the commencement date of this agreement, ThyssenKrupp Elevator assumes no responsibility for the operation of the governor or safeties on traction elevators, or the hydraulic system on hydraulic elevators under the terms of this agreement until the test has been made. We shall not be liable for damage to the building structure resulting from the performance of safety tests. Should the respective system fail any of the required tests, it shall be your sole responsibility to make necessary repairs and to place the equipment in a condition that will be acceptable for coverage under the terms of this agreement.

ThyssenKrupp Elevator shall not be liable for any loss, damage or delay caused by acts of government, labor, troubles, strikes, lockouts, fire, explosions, theft, riot, civil commotion, war, malicious mischief, acts of God, or any cause beyond its control, and in no event shall ThyssenKrupp Elevator be liable for any damages, nor any consequential, special, or indirect damages. ThyssenKrupp Elevator shall automatically receive an extension of time commensurate with any delay regarding the aforementioned.

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

You hereby waive trial by jury.

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

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

Price. The price for the services as stated in this agreement shall be **One Thousand Five Hundred Seventy Five** dollars ($1,575.00) per month, excluding taxes, payable quarterly in advance.

Term. This agreement is effective for one (1) year starting 07/01/2005 and is non-cancelable, except with thirty (30) days written notice for reasons of non-performance. "Non-performance" is defined as our inability to remedy any deficiencies within thirty (30) days after receiving written notification from you. To ensure continuous service, this agreement will be automatically renewed for successive one (1) year periods, unless either party timely serves written notice upon the other party of its intention to cancel at least ninety (90) days before the end of the initial one (1) year period, or ninety (90) days before the end of any subsequent one (1) year renewal period. Notice shall be sent by certified mail, return receipt requested. Time is of the essence.

Early Payment Discount. If you pay in advance for twelve (12) months of service on the units covered in this agreement, you may take a 3% discount from the annual price.

Annual Price Adjustments. As the costs we incur for providing elevator service may increase, we will adjust the price of your service accordingly, annually, effective on the date a field labor increase is implemented. We will adjust your monthly price based on the percentage change in the average rate paid to elevator examiners. This rate consists of the hourly rate paid to examiners plus fringe benefits and union welfare granted in place of or in addition to the hourly rate. Fringe benefits include pensions, vacations, paid holidays, group insurance, sickness and accident insurance, and hospital insurance.

Pricing may also increase or decrease in the event the equipment is modified from its present state.

Overdue Invoices. A service charge of 1½% per month, or the highest legal rate, whichever is less, shall apply to overdue accounts. If you do not pay any sum within sixty (60) days from the billing date, we may also choose to do one of the following: 1) suspend all service until all amounts due have been paid in full, or 2) declare all sums for the unexpired term of this agreement due immediately and terminate this agreement. If ThyssenKrupp Elevator elects to suspend service, we shall not be responsible for damages or injuries to persons or property from the lack of service. Upon resumption of service, you will be responsible for payment to ThyssenKrupp Elevator of any costs we incur as a result of the suspension of service. Time is of the essence.

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

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

ThyssenKrupp Elevator Company:	City of Milpitas	ThyssenKrupp Elevator Approval:
By: _____	By: _____	By: _____
(Signature of Authorized Individual)	(Signature of Authorized Individual)	(Signature of Authorized Individual)
ThyssenKrupp Representative Tara Fitzsimmons (408) 392-0910	_____ (Print or Type Name)	ALLAN HEROALD (Print or Type Name)
	_____ (Print or Type Title)	SERVICE MGR (Print or Type Title)
8/19/05 (Date of Submittal)	_____ (Date of Approval)	8-19-05 Date of Approval

APPROVED
DATE 8/18/05
CITY ATTORNEY

ADDITIONAL INSURED AGREEMENT

Project: City of Milpitas

THYSSENKRUPP ELEVATOR CORPORATION agrees to name City of Milpitas as Additional Insured to our existing General Liability and Automobile Liability insurance policies upon the following conditions. Coverage and defense costs afforded to an Additional Insured shall be limited to losses resultant from the acts, actions, omissions or neglects of THYSSENKRUPP ELEVATOR CORPORATION.

Amend so that ThyssenKrupp Elevator Corporation's insurance policy shall be primary over any other insurance available only with respect to work performed by ThyssenKrupp Elevator Corporation and only arising out of the negligent acts or omissions of the Subcontractor.

CITY OF MILPITAS	THYSSENKRUPP ELEVATOR CORPORATION
SIGNATURE	SIGNATURE
Charles Lawson C.M.	JAMES M. BAIRD CONTRACT ANALYST
PRINTED NAME AND TITLE	PRINTED NAME AND TITLE
10/4/05	1-03-05
DATE	DATE

APPROVED

10-5-05

CITY ATTORNEY

Special Considerations

MONTHLY FIRE SERVICE TESTING
This Agreement includes monthly fire service testing in accordance with California Administrative Code 3000 (h), ASME Rule 1206.7, current edition.
At the conclusion of each calendar year, Purchaser assumes responsibility for maintaining long-term storage of such records.

OT MAINTENANCE FOR TRACTION ELEVATOR
Effective July 1, 2005 this Agreement includes the cost to have the maintenance performed on Overtime for the traction passenger elevator (State # 124113) only. The hydraulic elevators (State # 124112, # 97374, # 97373, #097375, & # 102800) will continue to have maintenance performed during normal business hours. The straight time portion of maintenance for all elevators combined is $1300.00/month. The traction elevator will include an additional $275.00/month for the OT maintenance cost. The price for the services stated in this agreement shall total $1,575.00/month excluding taxes payable quarterly in advance. All normal and after hour service requests and repairs are subject to the terms and conditions stated in this agreement.