

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MILPITAS APPROVING THE MAINTENANCE CONTRACT RENEWAL WITH THYSSENKRUPP ELEVATOR CORPORATION FROM JULY 1, 2013 TO JUNE 30, 2014 IN THE AMOUNT OF \$26,668.72 AND AUTHORIZING THE CITY MANAGER TO EXERCISE UP TO THREE (3) ANNUAL OPTIONS WITH ANNUAL FEE INCREASES NOT-TO-EXCEED 3.5% PER YEAR, SUBJECT TO APPROPRIATION OF FUNDS AND WITHOUT FURTHER CITY COUNCIL APPROVAL**

**WHEREAS**, the City of Milpitas (“City”) entered into a Platinum Maintenance Agreement with ThyssenKrupp Elevator Corporation on July 1, 2005 for annual maintenance and repair of the City Hall, Police and Public Works building elevators (“Agreement”); and

**WHEREAS**, the technology to maintain ThyssenKrupp Elevators is proprietary and in September 2011 the City Council approved a Sole Source designation pursuant to Milpitas Municipal Code Section I-2-3.09 for a five (5) year period; and

**WHEREAS**, the Agreement renews on an annual basis and the parties desire to enter into Amendment No. 8 to the Agreement for the retroactive period of July 1, 2013 to June 30, 2014 in the amount of \$26,668.72, which also includes a contingency of \$5,000 for unanticipated repairs; and

**WHEREAS**, City staff also requests authority for the City Manager to renew the Platinum Maintenance Agreement on an annual basis for the next three (3) years with an annual increase of no more than 3.5% per year, without further City Council approval except appropriation of funds.

**NOW, THEREFORE**, the City Council of the City of Milpitas hereby finds, determines, and resolves as follows:

1. The City Council has considered the full record before it, which may include but is not limited to such things as the staff report, testimony by staff and the public, and other materials and evidence submitted or provided to it. Furthermore, the recitals set forth above are found to be true and correct and are incorporated herein by reference.
2. The City Council approves Amendment No. 8 to the Agreement with ThyssenKrupp Elevator Corporation for the Platinum Maintenance Elevator Service in the amount of \$26,668.72 and for a retroactive period from July 1, 2013 to June 30, 2014, a copy of which is attached hereto as **Exhibit A**.
3. The City Council authorizes the City Manager to extend the term of the Agreement on annual basis for the next three (3) years with an annual increase of no more than 3.5% per year, without further City Council approval except appropriation of funds.

PASSED AND ADOPTED this \_\_\_\_ day of, \_\_\_\_\_, 2013, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

ATTEST:

APPROVED:

\_\_\_\_\_  
Mary Lavelle, City Clerk

\_\_\_\_\_  
Jose S. Esteves, Mayor

APPROVED AS TO FORM:

\_\_\_\_\_  
Michael J. Ogaz, City Attorney

**EXHIBIT A**

**AMENDMENT NO. 8 TO AGREEMENT WITH  
THYSSENKRUPP ELEVATOR CORPORATION  
FOR PLATINIUM MAINTENANCE SERVICE**

This Amendment is entered into retroactively on July 1, 2013 by and between the City of Milpitas, a municipal corporation of the State of California (hereafter referred to as "CITY") and **Thyssenkrupp Elevator Corporation**, a Delaware corporation registered to do business in California (hereafter referred to as "CONTRACTOR").

**RECITALS:**

- A. WHEREAS, the parties entered into an agreement entitled "Platinum Maintenance Agreement" on July 1, 2005 ("Agreement") for an initial Annual Maintenance Contract Fee of Eighteen Thousand Nine Hundred dollars (\$18,900.00). The Agreement was for one (1) year and automatically renews on an annual basis unless terminated; and
- B. WHEREAS, the parties entered into Amendment No. 1 to the Agreement on August 7, 2007 to decrease the Annual Maintenance Contract Fee to Eighteen Thousand One Hundred Twenty-Eight dollars and Thirty-Six cents (\$18,128.36) for the period of July 1, 2007 to June 30, 2008.
- C. WHEREAS, the parties entered into Amendment No. 2 to the Agreement on September 15, 2008 to increase the Annual Maintenance Contract Fee to Eighteen Thousand Six Hundred Twenty-Six Dollars and Ninety-Two cents (\$18,626.92) for the period of July 1, 2008 to June 30, 2009; and
- D. WHEREAS, the parties entered into Amendment No. 3 to the Agreement on July 1, 2009 to increase the Annual Maintenance Contract Fee to Nineteen Thousand One Hundred Thirty-Nine dollars and Twenty cents (\$19,139.20), plus a contingency of Thirteen Thousand dollars (\$13,000) for incidental repairs not contemplated in the Agreement for a total contract value of Thirty-Two Thousand One Hundred Thirty-Nine dollars and Twenty cents (\$32,139.20) for the period of July 1, 2009 to June 30, 2010; and
- E. WHEREAS, the parties entered into Amendment No. 4 to the Agreement on July 1, 2010 to increase the Annual Maintenance Contract Fee to Nineteen Thousand Six Hundred Fifty-One dollars and Forty cents (\$19,651.40) and a contingency of Thirteen Thousand (\$13,000) for incidental repairs not contemplated in the Agreement for a total contract value of Thirty-Two Thousand Six Hundred Fifty-One dollars and Forty cents (\$32,651.40) for the period of July 1, 2010 to June 30, 2011; and
- F. WHEREAS, the parties entered into Amendment No. 5 to the Agreement on November 1, 2010 to make various changes to the terms and conditions of the Agreement at no cost to the City; and
- G. WHEREAS, the parties entered into Amendment No. 6 to the Agreement on July 1, 2011 to increase the Annual Maintenance Contract Fee to Twenty Thousand Fifty-Four dollars and Eighty-Six cents (\$20,054.86) and decrease the contingency to Ten Thousand (\$10,000) for incidental repairs not contemplated in the Agreement for a total contract value of Thirty Thousand Fifty-Four dollars and Eighty-Six cents (\$30,054.86) for the period of July 1, 2011 to June 30, 2012; and
- H. WHEREAS, the parties entered into Amendment No. 7 to the Agreement on July 1, 2012 to increase the Annual Maintenance Contract Fee to Twenty-One Thousand Eighty-Eight dollars and Eighty-Four cents (\$21,088.84) and a contingency of Ten Thousand (\$10,000) for incidental repairs not contemplated in the Agreement for a total contract value of Thirty-One Thousand Eighty-Eight dollars and Eighty-Four cents (\$31,088.84) for the period of July 1, 2012 to June 30, 2013; and
- I. WHEREAS, the parties desire to amend the Agreement to authorize an increase in the Annual Maintenance Contract Fee and authorize renewal of the Agreement without further City Council approval.

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

1. The City agrees to pay Contractor the total sum of Twenty-Six Thousand Six Hundred Sixty-Eight dollars and Seventy-Two cents (\$26,668.72) for the period of July 1, 2013 to June 30, 2014 under the terms and conditions of the amended Agreement.
2. Page 6, ANNUAL PRICE ADJUSTMENT section is amended to read as follows:  
  
“Contractor shall notify City in writing on an annual basis at least sixty (60) days prior to the expiration date of the Agreement of the proposed Annual Maintenance Contract Fee for the following year. If City elects to continue with the Agreement for an additional year, City will provide written notice to Contractor in the form attached hereto as “Exhibit A – Notice of Exercise of Option to Extend Agreement.” Contractor acknowledges and agrees that the Annual Maintenance Contract Fee shall not increase by more than three and a half percent (3.5%) on an annual basis.
3. CONTRACTOR agrees to continue to maintain and pay for all insurance policies as stated in “Exhibit A – Insurance Requirements General” throughout the term of the Agreement and shall provide the City with renewal certificates and endorsements of the insurance policy.
4. All other provisions of the amended Agreement not amended by this Amendment No. 8 shall remain in full force and effect.

This Amendment is executed as of the date written on Page 1.

APPROVED BY:

CITY OF MILPITAS

THYSSENKRUPP ELEVATOR

\_\_\_\_\_  
Thomas C. Williams, City Manager

\_\_\_\_\_  
Name of Authorized Representative

Approved As To Form:

\_\_\_\_\_  
Title of Authorized Representative

\_\_\_\_\_  
Mike J. Ogaz, City Attorney

Approved As To Content:

\_\_\_\_\_  
Steve Erickson, Project Manager

**EXHIBIT A - NOTICE OF EXERCISE OF OPTION TO EXTEND AGREEMENT**

<b>AGREEMENT TITLE and DATE:</b>	
<b>CONTRACTOR Name and Address:</b>	
<b>DATE OF OPTION:</b>	

*(date the notice is sent must be consistent with the time for exercise set forth in Agreement)*

Pursuant to Section \_\_\_\_ of the Agreement referenced above, the City of Milpitas hereby exercises its option to extend the term under the following provisions:

<b>OPTION NO.</b>	
-------------------	--

**NEW OPTION TERM**

Begin date:	
End date:	

**CHANGES IN RATE OF COMPENSATION**

<b>Percentage change in CPI upon which adjustment is based:</b>	
---	--

Pursuant to Section \_\_\_ of the Agreement the Rates of Compensation are hereby adjusted as follows:  
*(use attachment if necessary)*

<b>MAXIMUM COMPENSATION for New Option Term:</b>	
--	--

For the option term exercised by this Notice, City shall pay Contractor an amount not to exceed the amount set forth above for Contractor's services and reimbursable expenses, if any. The undersigned signing on behalf of the City of Milpitas hereby certifies that an unexpended appropriation is available for the term exercised by this Notice, and that funds are available as of the date of this signature.

CITY OF Milpitas a municipal corporation  By _____ Name: Title:
--