

AMENDATORY ELEVATOR MAINTENANCE AGREEMENT

THIS AMENDATORY ELEVATOR MAINTENANCE AGREEMENT (together with the Exhibits, the "Agreement") is made and entered effective as of the date set forth on the City's signature page below ("Effective Date") by and between the **CITY AND COUNTY OF DENVER**, a municipal corporation of the State of Colorado, hereinafter referred to as the "City," and **THYSSENKRUPP ELEVATOR CORPORATION**, a Delaware corporation, with a local address of 7367 South Revere Parkway, Unit 2-A, Centennial, CO 80112, hereinafter referred to as the "Contractor."

WITNESSETH:

WHEREAS, the City and the Contractor entered into an Agreement on July 29, 2008;
and

WHEREAS, the City retained the Contractor to provide elevator maintenance services;
and

WHEREAS, the City and the Contractor desire to amend the Agreement to add a revised payment schedule as Exhibit B-1, to include additional payments to be paid to the Contractor, to delete Paragraph 18 entitled **PERFORMANCE BONDS AND SURETIES** from this Agreement, to update 27. B. Proof of Insurance with ACCORD as Exhibit F, and to add Section 45 entitled **ELECTRONIC SIGNATURES AND ELECTRONIC RECORDS** to the Agreement;

NOW, THEREFORE, in consideration of the premises, the mutual agreements herein contained, and subject to the terms and conditions hereinafter stated, it is hereby understood and agreed by the parties hereto as follows:

A. That Paragraph 3 of the Agreement, entitled "**WORK TO BE PERFORMED**" is amended to read as follows:

"3. **WORK TO BE PERFORMED:** The Contractor shall, under the general direction of the Manager, perform the elevator maintenance and repair services described in Exhibit A (Attached to Agreement dated 7/29/2008) at the locations and pursuant to the schedule identified on Exhibit B (Attached to Agreement dated 7/29/2008) and pursuant to the schedule identified on Exhibit B-1 (Attached to this

Agreement). All records, finding, research, opinions and documentation prepared by the Contractor under this Agreement, if delivered to and accepted by the Manager shall become the property of the City. The Contractor also agrees to allow the City to review any of the procedures used by him/her in performing the services hereunder and to make available for inspection notes and other documents used in the preparation of any of the services required hereunder.”

B. That Paragraph 4 of the Agreement, entitled “TERM OF AGREEMENT” is amended to read as

“4 TERM OF AGREEMENT: The initial term of the Agreement shall commence on June 1, 2008 and terminate on May 31, 2014.”

C. That Paragraph 6 of the Agreement, entitled “PAYMENT” is amended to read as follows:

“6. PAYMENT:

A. The City agrees to pay the Contractor, and the Contractor agrees to accept as full and total compensation for the services provided under this Agreement, the fees set forth in Exhibit B (Attached to Agreement dated 7/29/2008) and the fees set forth in Exhibit B-1 (Attached to this Agreement).

B. The Contractor shall submit an invoice for any charges for emergency services permitted pursuant to Exhibit A (Attached to Agreement dated 7/29/2008). The invoice shall delineate the number of hours spent with a detailed description of the services rendered. Any such invoices are to be submitted by the fifteenth (15th) day of the month following the month in which the work was performed to the appropriate agency contact identified in Exhibit B (Attached to Agreement dated 7/29/2008) and the fees set forth in Exhibit B-1 (Attached to this Agreement).

C. Any other provision of this Agreement notwithstanding, in no event shall the City be liable for payment for services rendered and expenses incurred by the Contractor under the terms of this Agreement for any amount in excess of the sum of **FIVE HUNDRED SIXTY-SEVEN THOUSAND DOLLARS and NO/100 (\$567,000.00)**. The Contractor acknowledges that the City is not obligated to execute an Agreement or an amendment to Contractor for any further phase of work other than the work described herein, and that any work performed by Contractor beyond that specifically described is performed at Contractor's risk and without authorization under this Agreement. It is understood and agreed that any payment obligation of the City hereunder, whether direct or contingent, shall extend only to funds appropriated by the Denver City Council for the purpose of this Agreement, encumbered for the purpose of the Agreement and paid into the Treasury of the City. The Contractor acknowledges that (i) the City does not by this Agreement, irrevocably pledge present cash reserves for payments in future fiscal years, and (ii) this Agreement is not intended to create a multiple-fiscal year direct or indirect debt or financial obligation of the City.”

D. That Paragraph 18 of the Agreement, entitled “PERFORMANCE BONDS AND SURETIES” is deleted in its entirety.

E. That Paragraph 27. B of the Agreement, entitled “**Proof of Insurance**” is amended to read as follows:

“27. INSURANCE:

B. **Proof of Insurance:** Contractor shall provide a copy of this Agreement to its insurance agent or broker. Contractor may not commence services or work relating to the Agreement prior to placement of coverage. Contractor certifies that the certificate of insurance attached as Exhibit F, preferably an ACORD certificate, complies with all insurance requirements of this Agreement. The City requests that the City’s contract number be referenced on the Certificate. The City’s acceptance of a certificate of insurance or other proof of insurance that does not comply with all insurance requirements set forth in this Agreement shall not act as a waiver of Contractor’s breach of this Agreement or of any of the City’s rights or remedies under this Agreement. The City’s Risk Management Office may require additional proof of insurance, including but not limited to policies and endorsements.”

F. That Paragraph 45 of the Agreement, entitled “ELECTRONIC SIGNATURES AND ELECTRONIC RECORDS” is added to read as follows:

“45. ELECTRONIC SIGNATURES AND ELECTRONIC RECORDS:

Contractor consents to the use of electronic signatures by the City. The Agreement, and any other documents requiring a signature hereunder, may be signed electronically by the City in the manner specified by the City. The Parties agree not to deny the legal effect or enforceability of the Agreement solely because it is in electronic form or because an electronic record was used in its formation. The Parties agree not to object to the admissibility of the Agreement in the form of an electronic record, or a paper copy of an electronic document, or a paper copy of a document bearing an electronic signature, on the ground that it is an electronic record or electronic signature or that it is not in its original form or is not an original.”

G. Except as here amended, the Agreement is affirmed and ratified in each and every particular.

[SIGNATURE PAGE TO FOLLOW]

Contract Control Number:

IN WITNESS WHEREOF, the parties have set their hands and affixed their seals at Denver, Colorado as of

SEAL

CITY AND COUNTY OF DENVER

ATTEST:

By _____

APPROVED AS TO FORM:

REGISTERED AND COUNTERSIGNED:

By _____

By _____

By _____



Contract Control Number: GENRL-CE86011-01

Contractor Name: THYSSENKRUPP ELEVATOR

By: *Brian Baxter*

Name: BRIAN BAXTER
(please print)

Title: BRANCH MANAGER
(please print)

ATTEST: [if required]

By: _____

Name: _____
(please print)

Title: _____
(please print)



ThyssenKrupp Elevator amendment CE86011

Exhibit B-1

Original Payment Schedule

Year	Monthly	Annual Amount	
2011	\$ 13,860.00	\$ 166,320.00	12 months of payment
2012	\$ 14,552.00	\$ 174,624.00	12 months of payment
2013	\$ 15,280.00	\$ 183,360.00	12 months of payment
2014	\$ 16,044.00	\$ 192,528.00	12 months of payment
		\$ 716,832.00	

Revised Original Payment Schedule due maintenance start date

Year	Monthly	Annual Amount	
			Maintenance payments started on 6-1-11 for Detention Center and Courthouse started on 7-1-11
2011	\$ 13,860.00	\$ 93,555.00	
2012	\$ 14,552.00	\$ 174,624.00	
2013	\$ 15,280.00	\$ 183,360.00	
2014	\$ 16,044.00	\$ 96,264.00	Contract expires 5-31-14 so last payment will be 5-1-14
		\$ 547,803.00	

Payments issued \$ 381,317.00

Difference \$ 166,486.00

Amendment amount \$ 167,000.00
\$ (514.00)