

**City and County of San Francisco  
Airport Commission  
P.O. Box 8097  
San Francisco, California 94128**

**Modification No. 1**

THIS MODIFICATION (this “Modification”) is made as of **July 1, 2020**, in San Francisco, California, by and between **thyssenkrupp Elevator Corporation** (the “Contractor”), and the City and County of San Francisco, a municipal corporation (the “City”), acting by and through its Airport Commission, hereinafter referred to as “**Commission**.”

RECITALS

A. City and Contractor have entered into the Agreement for the San Francisco International Airport (the “Airport” or “SFO”) (as defined below); and,

B. The Commission is authorized to enter into all contracts which relate to matters under its jurisdiction; and

C. On May 7, 2019, by Resolution No. 19-0099, the Commission awarded this Agreement to the Contractor for a two-year term from July 1, 2019 through June 30, 2021, in an amount not to exceed \$9,682,912; and

D. Due to the financial impacts that the Airport and City are currently experiencing as a result of the COVID-19 pandemic, City requested that all professional service contractors reduce unit prices under their contracts, which will assist in maintaining the financial feasibility of Airport’s continued procurement of Services under this Agreement, of acknowledged value to Contractor; and

E. City and Contractor desire to administratively modify the Agreement on the terms and conditions set forth herein to reduce unit prices for preventative maintenance and adjust the preventative maintenance schedule; and

F. Approval for this Agreement was obtained when the Civil Service Commission approved PSC No. 47246-18/19 on April 15, 2019; and

Now, THEREFORE, the parties agree that the following Articles have been changed as follows:

**1. Article 1. Definitions**, has been amended to include the following into the Agreement:

**a. Section 1.10 “City Data” or “Data”** is hereby added to the Agreement to read as follows:

**1.10** “City Data” or “Data” includes, but is not limited to, all data collected, used, maintained, processed, stored, or generated by or on behalf of the City in connection with this Agreement. This includes data that is provided by a third-party for use under this Agreement.

**b. Section 1.11 Confidential Information** is hereby added to the Agreement to read as follows:

1.11 Confidential Information.

1.11.1 “Confidential Information” means confidential City information including, but not limited to, personally-identifiable information (“PII”), protected health information (“PHI”), or individual financial information (collectively, “Proprietary or Confidential Information”) that is subject to local, state or federal laws restricting the use and disclosure of such information, including, but not limited to, Article 1, Section 1 of the California Constitution; the California Information Practices Act (Civil Code § 1798 et seq.); the California Confidentiality of Medical Information Act (Civil Code § 56 et seq.); the federal Gramm-Leach-Bliley Act (15 U.S.C. §§ 6801(b) and 6805(b)(2)); the privacy and information security aspects of the Administrative Simplification provisions of the federal Health Insurance Portability and Accountability Act (45 CFR Part 160 and Subparts A, C, and E of part 164); and San Francisco Administrative Code Chapter 12M (Chapter 12M).

1.11.2 “Confidential Information” also means any and all nonpublic information, whether written, electronic, or oral, concerning or relating to Airport technology, computer, or data systems, processes, or procedures, or Critical Infrastructure Information or Protected Critical Infrastructure Information as defined under the Homeland Security Act of 2002 and 6 CFR §29.2, which information or access to such information is supplied by the Airport or on behalf of the Airport to Contractor or otherwise acquired by Contractor during the course of dealings with the Airport. Additionally, “Confidential Information” includes security or security-related information, whether or not such information constitutes sensitive security information (“SSI”) as provided under 49 CFR Part 1520. In the event Contractor acquires SSI, it shall treat such information in conformance with federal law and the provisions of this Contract.

1.11.3 “Confidential Information” is confidential regardless of whether such information is in its original form, a copy, or a derivative product. “Derivative” means written or electronic material created from or with, or based on Confidential Information (i.e., a report analyzing Confidential Information shall also be considered Confidential Information). Confidential Information shall also mean proprietary, trade secret or other protected information, identified as Confidential Information by the Airport.

**1.12 Other Terms.** Terms used and not defined in this Modification shall have the meanings assigned to such terms in the Agreement.

**2. Article 4 Services and Resources, Section 4.5 Assignment** is hereby replaced with new **Section 4.5 Assignment** as follows:

**4.5 Assignment.** The Services to be performed by Contractor are personal in character and neither this Agreement nor any duties or obligations may be directly or indirectly assigned, novated, hypothecated, transferred, or delegated by Contractor, or, where the Contractor is a joint venture, a joint venture partner, (collectively referred to as an “Assignment”) unless first approved by City by written instrument executed and approved in the same manner as this Agreement in accordance with the Administrative Code. The City’s approval of any such Assignment is subject to the Contractor demonstrating to City’s reasonable satisfaction that the proposed transferee is: (i) reputable and capable, financially and otherwise, of performing each of Contractor’s obligations under this Agreement and any other documents to be assigned, (ii) not forbidden by applicable law from transacting business or entering into contracts with City; and (iii) subject to the jurisdiction of the courts of the State of California. A change of ownership or control of Contractor or a sale or transfer of substantially all of the assets of Contractor shall be deemed an Assignment for purposes of this Agreement. Contractor shall immediately notify City about any Assignment. Any purported Assignment made in violation of this provision shall be null and void.

**3. New Article 7 Payment of Taxes, Section 7.3 Withholding** is hereby added to the Agreement to read as follows:

**7.3 Withholding.** Contractor agrees that it is obligated to pay all amounts due to the City under the San Francisco Business and Tax Regulations Code during the term of this Agreement. Pursuant to Section 6.10-2 of the San Francisco Business and Tax Regulations Code, Contractor further acknowledges and agrees that City may withhold any payments due to Contractor under this Agreement if Contractor is delinquent in the payment of any amount required to be paid to the City under the San Francisco Business and Tax Regulations Code. Any payments withheld under this paragraph shall be made to Contractor, without interest, upon Contractor coming back into compliance with its obligations.

**4. Article 8 Termination and Default, 8.2.1(a)** is hereby amended to include **Article 13 “Data and Security”** into the table.

**5. Article 8 Termination and Default, 8.4.1** is hereby amended to include **Article 13 “Data and Security”** into the table.

**6. Article 10 Additional Requirements Incorporated by Reference, Section 10.4 (Reserved)** is hereby replaced with **10.4 Consideration of Salary History**, added to the Agreement to read as follows:

**10.4 Consideration of Salary History.** Contractor shall comply with San Francisco Administrative Code Chapter 12K, the Consideration of Salary History Ordinance or “Pay Parity Act.” Contractor is prohibited from considering current or past salary of an applicant in determining whether to hire the applicant or what salary to offer the applicant to the extent that such applicant is applying for employment to be performed on this Agreement or in furtherance of this Agreement, and whose application, in whole or part, will be solicited, received, processed or considered, whether or not through an interview, in the City or on City property. The ordinance also prohibits employers from (1) asking such applicants about their current or past salary or (2) disclosing a current or former employee's salary history without that employee's authorization unless the salary history is publicly available. Contractor is subject to the enforcement and penalty provisions in Chapter 12K. Information about and the text of Chapter 12K is available on the web at <https://sfgov.org/olse/consideration-salary-history> . Contractor is required to comply with all of the applicable provisions of 12K, irrespective of the listing of obligations in this Section.

**7. Article 10 Additional Requirements Incorporated by Reference, Section 10.11 Limitations on Contributions** is hereby replaced with **New 10.11 Limitations on Contributions**.

**10.11 Limitations on Contributions.** By executing this Agreement, Contractor acknowledges its obligations under Section 1.126 of the City’s Campaign and Governmental Conduct Code, which prohibits any person who contracts with, or is seeking a contract with, any department of the City for the rendition of personal services, for the furnishing of any material, supplies or equipment, for the sale or lease of any land or building, for a grant, loan or loan guarantee, or for a development agreement, from making any campaign contribution to (i) a City elected official if the contract must be approved by that official, a board on which that official serves, or the board of a state agency on which an appointee of that official serves, (ii) a candidate for that City elective office, or (iii) a committee controlled by such elected official or a candidate for that office, at any time from the submission of a proposal for the contract until the later of either the termination of negotiations for such contract or twelve months after the date the City approves the contract. The prohibition on contributions applies to each prospective party to the contract; each member of Contractor’s board of directors; Contractor’s chairperson, chief executive officer, chief financial officer and chief operating officer; any person with an ownership interest of more than 10% in Contractor; any subcontractor listed in the bid or contract; and any committee that is sponsored or controlled by Contractor. Contractor certifies that it has informed each such person of the limitation on contributions imposed by Section 1.126 by the time it submitted a proposal for the contract, and has

provided the names of the persons required to be informed to the City department with whom it is contracting.

**8. Article 11 General Provisions, 11.3 (Reserved)** is hereby replaced with **11.3 Incorporation of Recitals**, to read as follows:

**11.3 Incorporation of Recitals.** The matters recited above are hereby incorporated into and made part of this Agreement.

**9. New Article 11 General Provisions, Section 11.14 Notification of Legal Requests** is hereby added to the Agreement to read as follows:

**11.14 Notification of Legal Requests.** Contractor shall immediately notify City upon receipt of any subpoenas, service of process, litigation holds, discovery requests and other legal requests (“Legal Requests”) related to City Data or which in any way might reasonably require access to City Data, and in no event later than 24 hours after it receives the request. Contractor shall not respond to Legal Requests related to City without first notifying City other than to notify the requestor that the information sought is potentially covered under a non-disclosure agreement. Contractor shall retain and preserve City Data in accordance with the City’s instruction and requests, including, without limitation, any retention schedules and/or litigation hold orders provided by the City to Contractor, independent of where the City Data is stored.

**10. New Article 13 Data and Security, Section 13.4 Management of City Data and Confidential Information** is hereby added to the Agreement to read as follows:

**13.1 Management of City Data and Confidential Information**

**13.4.1 Access to City Data.** City shall at all times have access to and control of all City Data, and shall be able to retrieve it in a readable format, in electronic form and/or print, at any time, at no additional cost.

**13.4.2 Use of City Data and Confidential Information.** Contractor agrees to hold City's Confidential Information received from or created on behalf of the City in strictest confidence. Contractor shall not use or disclose City's Data or Confidential Information except as permitted or required by the Agreement or as otherwise authorized in writing by the City. Any work using, or sharing or storage of, City's Confidential Information outside the United States is subject to prior written authorization by the City. Access to City's Confidential Information must be strictly controlled and limited to Contractor’s staff assigned to this project on a need-to-know basis only. Contractor is provided a limited non-exclusive license to use the City Data or Confidential Information solely for performing its obligations under the Agreement and not for Contractor’s own purposes or later use. Nothing herein shall be construed to confer any license or right to the City Data or Confidential Information, by implication, estoppel or otherwise, under copyright or other intellectual property rights, to any third-party. Unauthorized use of City Data or Confidential Information by Contractor, subcontractors or other third-parties is prohibited. For purpose of this requirement, the phrase “unauthorized use” means the data mining or processing of data, stored or transmitted by the service, for commercial purposes, advertising or advertising-related purposes, or for any purpose other than security or service delivery analysis that is not explicitly authorized.

**13.4.3 Disposition of Confidential Information.** Upon termination of Agreement or request of City, Contractor shall within forty-eight (48) hours return all Confidential Information which includes all original media. Once Contractor has received written confirmation from City that

Confidential Information has been successfully transferred to City, Contractor shall within ten (10) business days purge all Confidential Information from its servers, any hosted environment Contractor has used in performance of this Agreement, work stations that were used to process the data or for production of the data, and any other work files stored by Contractor in whatever medium. Contractor shall provide City with written certification that such purge occurred within five (5) business days of the purge.

**11. Appendix A, Scope of Services, A. General, 4. Regular Work Hours** is hereby replaced in its entirety with the following, to reduce regular service from seven days per week to five days per week (working days only):

**4. Regular Work Hours:** Contractor shall be prepared to provide service five days per week (Monday through Friday, excluding legal holidays). Regular work hours may be negotiated between the Contractor and the Airport, however planned preventative maintenance should be performed primarily between the hours of 7:00 a.m. and 3:30 p.m., Monday through Friday.

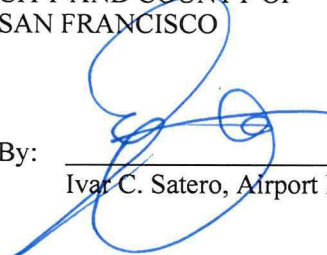




**12. A. Appendix B, A. Preventative Maintenance Service** is hereby amended. The table of unit prices has been replaced with the following, which reflects a five percent reduction of the monthly prices for preventative maintenance of elevators:

Description	Price per Elevator per Month
Monthly Services for Hydraulic Elevators Built 1990 or Earlier and Less than or Equal to 4000lbs Capacity	\$1,601
Monthly Services for Hydraulic Elevators Built 1990 or Earlier and Less than or Equal to 4000lbs Capacity	\$1,563
Monthly Service for Hydraulic Elevators Built 1991 to 2014 and Less than or Equal to 4000lbs Capacity	\$1,525
Monthly Service for Hydraulic Elevators Built 1991 to 2014 and Greater than 4000lbs Capacity	\$1,487
Monthly Service for Hydraulic Elevators Built 2015 or Later and Less than or Equal to 4000lbs Capacity	\$1,479
Monthly Service for Traction Elevators Built 1990 or Earlier and Less than or Equal to 4000lbs Capacity	\$1,601
Monthly Service for Traction Elevators Built 1990 or Earlier and Greater than 4000lbs Capacity	\$1,563
Monthly Service for Traction Elevators Built 1991 to 2014 and Less than or Equal to 4000lbs Capacity	\$1,525
Monthly Service for Traction Elevators Built 1991 to 2014 and Greater than 4000lbs Capacity	\$1,487
Monthly Service for Traction Elevators Built 2015 or Later and Less than or Equal to 4000lbs Capacity	\$1,479
Monthly Service for Traction Elevators Built 2015 or Later and Greater than 4000lbs Capacity	\$1,472

**13. Effective Date.** Each of the changes set forth in this Modification shall be effective on and after the date of this Modification, except for the reduction in monthly prices for preventative maintenance, which shall be effective on **August 1, 2020**.

**14. Legal Effect.** Except as expressly changed by this Modification, all of the terms and conditions of the Agreement shall remain unchanged and in full force and effect.

IN WITNESS WHEREOF, Contractor and City have executed this Modification as of the date first referenced above.

<p><b>CITY</b> AIRPORT COMMISSION CITY AND COUNTY OF SAN FRANCISCO</p> <p>By:  Ivar C. Satero, Airport Director</p> <p>Approved as to Form:  Dennis J. Herrera City Attorney</p> <p>By:  Daniel A. Edington Deputy City Attorney</p>	<p><b>CONTRACTOR</b></p> <p> Authorized Signature</p> <p> Printed Name</p> <p> Title</p> <p><u>thyssenkrupp Elevator Corporation</u> Company Name</p> <p><u>000003649</u> City Supplier ID</p> <p><u>292 Lawrence Avenue</u> Address</p> <p><u>South San Francisco, CA 94080</u> City, State, ZIP</p> <p><u>415-241-4525</u> Telephone Number</p> <p><u>62-1211267</u> Federal Employer ID Number</p>
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