

STATE OF TEXAS)
)
COUNTY OF EL PASO)

**ADDENDUM TO COUNTY-TK
ELEVATOR WATER DAMAGE WORK ORDERS FOR
DOWNTOWN DETENTION FACILITY ELEVATORS #2 AND #5**

This Addendum is entered into by and between the County of El Paso, a political subdivision of the State of Texas (“County” or “Purchaser”) and TK Elevator Corporation, a Delaware Corporation authorized to conduct business in Texas (“TK Elevator,” “Contractor,” or “Vendor”) to modify the two Water Damage Work Orders by and between the County and TK Elevator relating to Downtown Detention Facility (“DDF”) elevators #2 and #5, and any applicable addendums, amendments, attachments, exhibits, and any other applicable terms (collectively the “Agreement”). To the extent that any provisions in the main body of the Agreement conflict with the provisions of this addendum, this addendum shall control.

The parties wish to modify and supersede the Agreement in the following respects:

1. Agreement Documents. This Agreement is the result of a cooperative purchasing arrangement Region 4 ESC has with County and TK Elevator. TK Elevator’s contract with Region 4 ESC (Cooperative Contract No. R200502) is attached and incorporated by reference as Exhibit 1. TK Elevator’s resulting Water Damage Work Order for the DDF elevator #2 is attached and incorporated by reference as Exhibit 2-A. TK Elevator’s resulting Water Damage Work Order for the DDF elevator #5 is attached and incorporated by reference as Exhibit 2-B. **If there is an express conflict between the terms of this Addendum and any other Agreement Document, the terms of this Addendum shall govern, then those of the Cooperative Contract No. R200502, then those of TK Elevator’s Water Damage Work Orders.** The terms of Exhibits 1 and 2 and this Addendum shall be read in harmony, if possible, in order to give effect to all.
2. Effective Date. The Effective Date of this Agreement shall be December 4, 2023.
3. Compensation. Notwithstanding anything to the contrary within the Agreement, the County will pay to TK Elevator fifty percent (50%) of the contract price within ten (10) business days of the Agreement’s execution, and the remaining fifty percent (50%) of the contract price within thirty (30) calendar days of final, satisfactory completion of the project.
4. Start of Work. Within one County business day of the Effective Date, TK Elevator shall physically inspect DDF elevators #2 and #5 and begin work on them.
5. Time is of the Essence. All limitations of time in this Agreement are material. Parties agree that time is of the essence for each party to comply with its obligations under this Agreement. TK Elevator shall automatically receive an extension of time commensurate with any delay not solely caused by TK Elevator.

6. Cooperative Pricing Held Firm. TK Elevator agrees to honor Region 4 ESC Cooperative Contract No. R200502 pricing until satisfactory completion of the project regardless of whether Contract No. R200502 is renewed or terminated.
7. Tax Status. The County shall not be liable for any taxes from which it is exempt due to its status as a tax-exempt political subdivision of the State of Texas. The County's Tax Identification Number is 746000762.
8. Payment and Late Fees. The Texas Prompt Payment Act, Texas Government Code Sec. 2251.001 et seq., governs the applicable interest rate for late payments by the County.
9. Attorneys' Fees. The prevailing party shall be reimbursed for all costs and reasonable attorneys' fees.
10. Annual Appropriations. TK Elevator acknowledges that funding to pay for products, services, and obligations referenced in the Agreement is subject to annual appropriations by the County's governing body, and any termination, liability, indemnity, or other provision to the contrary shall not apply to County. County shall not be obligated for payment for any fiscal period for which funds have not been appropriated.
11. Proration. Upon termination of this Agreement by TK Elevator without cause, by non-appropriation of funds by the County's governing body, or by the County due to TK Elevator's material breach, TK Elevator will make a prorated refund to the County.
12. Termination. In the event either party materially breaches the Agreement and fails to remedy the breach after sixty (60) calendar days' written notice to the notifying party's reasonable satisfaction, the notifying party, in addition to exercising any other available rights or remedies, may terminate this Agreement. Termination will not affect County's obligation with respect to payment for satisfactory service received through the termination date.
13. Modifications/Amendments. The Agreement terms and conditions may not be amended or modified except in writing and executed by both parties to the Agreement and authorized by their respective governing bodies. Additionally, any modifications shall be in accordance with Texas Law, including, but not limited to, Texas Local Government Code Section 262.031.
14. Liquidated Damages. TK Elevator shall pay the County the sum of **\$500.00** per day for each and every calendar day of unexcused delay in achieving final and satisfactory completion of the work, in addition to any ADA violation penalties the County is assessed for the delay period. Any sums due and payable hereunder by TK Elevator shall be payable, not as a penalty, but as liquidated damages representing an estimate of delay damages likely to be sustained by the County, estimated at the time of executing this Agreement. This estimate takes into account a number of estimated costs that will stem from any delay, including, without limitation, certain County personnel expenses and ADA violation penalties assessed against the County during the delay period. When the County reasonably believes that final and satisfactory completion will be inexcusably delayed, the County shall be entitled, but not required, to withhold from any amounts otherwise due TK Elevator an amount then believed by the County to be adequate

to recover liquidated damages applicable to such delays. If and when TK Elevator overcomes the delay in achieving final and satisfactory completion, or any part thereof, for which the County has withheld payment, the County shall promptly release to TK Elevator those funds withheld, but no longer applicable, as liquidated damages. Any exercised penalties will have a cap of 30 days or \$15,000. Scope durations and milestones will be in a documented and mutually agreed upon schedule, in writing and fully incorporated for all purposes by this reference.

15. TK Elevator Representations and Warranties. TK Elevator shall perform its services consistent with all rules applicable to its professional practice and licensure, and the professional skill and standards ordinarily provided by like professionals practicing in the same/similar locality under same/similar circumstances. TK Elevator shall perform its services as expeditiously as is consistent with such professional skill, standard of care, and orderly progress of the work. TK Elevator and those it contracts/retains/employs to do project work or services, shall have all necessary licenses, certifications, permits or other authorizations necessary to perform on the project until their duties and obligations have been fully satisfied. TK Elevator assumes full responsibility to the County for the improper acts and omissions of TK Elevator, its employees, or others employed or retained by TK Elevator in connection with the project.
16. Independent Contractor. Nothing contained in this Agreement shall be construed as creating the relationship of employer and employee between the County and TK Elevator. TK Elevator shall be deemed at all times to be an independent contractor. The County shall not be subject to any obligations or liabilities of TK Elevator incurred in the performance of the Agreement. TK Elevator shall be fully responsible for payment of any and all taxes and insurance, including, but not limited to federal, state and local income taxes, and payroll taxes (such as FICA, federal and state unemployment insurance, etc.) and shall make such statutory filings as may be required by law.
17. Governing Law and Venue. The parties acknowledge that County is a political subdivision of the State of Texas. As such, the Agreement shall be governed by the laws of the State of Texas without regard to its conflicts of law principles. The laws of the State of Texas shall govern the validity, construction, interpretation, and effect of this Agreement. Venue and jurisdiction shall lie in El Paso County, Texas.
18. No Waiver. For any and all disputes arising out of the Agreement, both parties retain all rights and remedies available to them under Federal and State law.
19. No Assignment. TK Elevator shall not sell, assign, transfer, or convey any of its rights or obligations under this Agreement, in whole or in part, without the prior written consent of the County.
20. Indemnification. Any reference to County releasing, defending, indemnifying or holding harmless TK Elevator or any other entity is deleted. Any language where County assumes risk or liability of any entity is deleted. Pursuant to Texas Constitution art. XI, section 7, executory indemnity obligations cannot be paid from current revenues and neither a tax nor interest and sinking fund has been set, adopted, or established for the payment of any obligation in the

Agreement. Notwithstanding anything to the contrary, TK Elevator's obligations to indemnify, defend and hold harmless shall not extend to any claim caused by indemnified hereunder and any claim involving more than one party shall be handled so each party is responsible and liable for its share of the damages (and defense costs associated therewith) in proportion to its share of acts, actions, omissions or neglects. In no event shall either party to this Agreement be liable for consequential damages.

21. Government Transparency. The County is subject to the Open Meetings Act and the Public Information Act, Chapters 551 and 552, respectively, of the Texas Government Code, which may require the disclosure of information despite any confidentiality, proprietary, or other provisions to the contrary in the Contract terms and conditions between the parties.
22. Government Protections. Nothing in any of the terms and conditions which comprise the Agreement modifies or waives any governmental or official immunity or limitation of liability enjoyed by County, its elected officials, or employees at common law or under other Texas law.
23. Israel. If applicable, pursuant to Texas Government Code Section 2271.002, TK Elevator verifies it does not boycott Israel and will not boycott Israel as defined in Section 2271.001(1), for the duration of the Agreement. This provision is applicable if TK Elevator employees at least 10 full-time employees and this Agreement has a value of at least \$100,000.
24. Firearm Trade Association. If applicable, pursuant to Texas Government Code Section 2274.002, TK Elevator verifies that it does not have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association and will not, during the term of this contract, discriminate against a firearm entity or firearm trade association. This provision is applicable if TK Elevator employs at least 10 full-time employees, and this Agreement has a value of at least \$100,000.
25. Insurance. Any language obligating the County to provide liability insurance coverage on the behalf of TK Elevator's officers, agents, affiliates, and subsidiaries is deleted in its entirety. Pursuant to Region 4 Cooperative Contract No. R200502, TK Elevator shall, at its own expense, procure and maintain for the Agreement term, the insurance listed below in the indicated amounts. All such policies of insurance shall be written by insurance underwriters authorized to do business in the State of Texas. Except for workers' compensation, these policies shall name the County as an additional insured. The additional insured is defended and indemnified for claims arising from TK Elevator's acts, actions, omissions, or neglects; but is not defended or indemnified for its own acts, actions, omissions, neglects, or bare allegations. TK Elevator shall furnish to the County Risk Manager a certificate from each insurer showing insurance to be in effect as required before commencing work on the Project. This certificate shall provide that written notice of cancellation or any material change in said policy shall be delivered by the insurer to the County Risk Manager at least thirty (30) days in advance of such cancellation or change. In addition, TK Elevator shall require its contractors and consultants maintain general liability insurance as appropriate for the work and services provided.

General Liability

\$2,000,000 – annual aggregate limit

\$1,000,000 – each occurrence

\$1,000,000 – annual aggregate per Policy

\$1,000,000- personal and advertising injury

\$1,000,000 – products/completed operations – aggregate

\$500,000 – fire legal damage liability

\$5,000 - premises medical expense

Waiver of subrogation limited to the extent the claim is caused by TK Elevator

Automobile

\$1,000,000 – each occurrence

Waiver of subrogation limited to the extent the claim is caused by TK Elevator

Workers' Compensation

\$1,000,000 – Employers Liability – each accident

\$1,000,000 – Employers Liability – each employee

\$1,000,000 – Employers Liability – disease – policy limit

Statutory Limits

Waiver of Subrogation limited to the extent the claim is caused by TK Elevator

IN WITNESS WHEREOF, the parties execute this agreement on the 4th day of December, 2023.

THE COUNTY OF EL PASO, TEXAS

TK ELEVATOR CORPORATION

By _____

County Judge Ricardo A. Samaniego

Date: _____

By Donna L Sams

(Name) Donna L. Sams

(Title) Supervisor - S&R Contract Analysts

(Signor must have legal authority to bind their entity)

Date: November 30, 2023