

5) **Award of an Agreement to Elevator Support Services for the Repair of the Damaged Elevator at Rosetta Canyon Sports Park**

Approve and authorize the City Manager to execute an Agreement with Elevator Support Services in an amount not to exceed \$209,500.00 for the repair of the damaged elevator at Rosetta Canyon Sports Park in the form attached and in such final form as approved by the City Attorney and authorize the City Manager to execute change orders not to exceed a 10% contingency amount of \$20,950.00 for repair uncertainties and adjustments.



## REPORT TO CITY COUNCIL

**To:** Honorable Mayor and Members of the City Council

**From:** Jason Simpson, City Manager

**Prepared by:** Shannon Buckley, Assistant City Manager

**Date:** January 23, 2024

**Subject:** Award of an Agreement to Elevator Support Services for the Repair of the Damaged Elevator at Rosetta Canyon Sports Park

### **Recommendation**

Approve and authorize the City Manager to execute an Agreement with Elevator Support Services in an amount not to exceed \$209,500.00 for the repair of the damaged elevator at Rosetta Canyon Sports Park in the form attached and in such final form as approved by the City Attorney and authorize the City Manager to execute change orders not to exceed a 10% contingency amount of \$20,950.00 for repair uncertainties and adjustments.

### **Background**

On September 20, 2023, the Rosetta Canyon Sports Park restroom and concession building sustained a fire in the elevator lobby. The fire was rapidly reported and extinguished by the fire department responders. During the process of extinguishing the fire, water damaged the control components of the elevator making the elevator unusable.

### **Discussion**

Staff filed an insurance claim for the loss and repair of property with the City's insurance carrier. The City's insurance claim has been accepted and the damaged property cost has been recovered. The repair of the elevator is the only remaining item to be resolved from this damaged claim and the insurance adjusting agent has requested two repair estimates for the elevator damage. Below are the repair estimates:

Elevator Support Services	\$209,500.00
GMS Elevator Services, Inc.	\$221,495.00

## Elevator Repair at Rosetta Canyon Sports Park

The City's insurance carrier has approved the repair estimate from Elevator Support Services in the amount of \$209,500.00. With the approval of this agreement, the City will initiate the repair of the elevator.



## Elevator Repair at Rosetta Canyon Sports Park

### **Fiscal Impact**

The repair cost is fully covered under the City's property loss and all risk insurance.

### **Attachments**

Attachment 1 - Agreement

Attachment 2 - Proposal



## **AGREEMENT FOR CONTRACTOR SERVICES**

### ***Elevator Support Services, Inc.***

### ***Repair Elevator at Rosetta Canyon Sports Park***

This Agreement for Contractor Services (the "Agreement") is made and entered into as of January 23, 2024, by and between the City of Lake Elsinore, a municipal corporation ("City") and Elevator Support Services, Inc., a corporation ("Contractor").

## **RECITALS**

A. The City has determined that it requires the following contractor services:

Repair damaged elevator at Rosetta Canyon Sports Park

B. Contractor has submitted to City a proposal, dated January 8, 2024, attached hereto as Exhibit A ("Contractor's Proposal") and incorporated herein, to provide contractor services to City pursuant to the terms of this Agreement.

C. Contractor possesses the skill, experience, ability, background, certification and knowledge to perform the services described in this Agreement on the terms and conditions described herein.

D. City desires to retain Contractor to perform the services as provided herein and Contractor desires to provide such contractor services as set forth in this Agreement.

## **AGREEMENT**

1. Scope of Services. Contractor shall perform the services described in Contractor's Proposal (Exhibit A). Contractor shall provide such services at the time, place, and in the manner specified in Contractor's Proposal, subject to the direction of the City through its staff that it may provide from time to time.

2. Time of Performance.

a. Time of Essence. Time is of the essence in the performance of this Agreement. The time for completion of the professional services to be performed by Contractor is an essential condition of this Agreement. Contractor shall prosecute regularly and diligently the professional services contemplated pursuant to this Agreement according to the agreed upon performance schedule in Contractor's Proposal (Exhibit A).

b. Performance Schedule. Contractor shall commence the services pursuant to this Agreement upon receipt of a written notice to proceed and shall perform all services within the time period(s) established in the Contractor's Proposal (Exhibit A). When requested by Contractor, extensions to the time period(s) specified may be approved in writing by the City Manager.

c. Term. The term of this Agreement shall commence upon execution of this Agreement and shall continue until the services and related work are completed in accordance with the Contractor's Proposal (Exhibit A).

3. Compensation. Compensation to be paid to Contractor shall be in accordance with the fees set forth in Contractors' Proposal (Exhibit A), which is attached hereto and incorporated herein by reference. In no event shall Contractor's compensation exceed two hundred nine thousand five hundred dollars (\$209,500.00) without additional written authorization from the City. Notwithstanding any provision of Contractor's Proposal to the contrary, out of pocket expenses set forth in Exhibit A shall be reimbursed at cost without an inflator or administrative charge. Payment by City under this Agreement shall not be deemed a waiver of defects, even if such defects were known to the City at the time of payment.

4. Method of Payment. Contractor shall promptly submit billings to the City describing the services and related work performed during the preceding month to the extent that such services and related work were performed. Contractor's bills shall be segregated by project task, if applicable, such that the City receives a separate accounting for work done on each individual task for which Contractor provides services. Contractor's bills shall include a brief description of the services performed, the date the services were performed, the number of hours spent and by whom, and a description of any reimbursable expenditures. City shall pay Contractor no later than forty-five (45) days after receipt of the monthly invoice by City staff.

5. Background Checks. At any time during the term of this Agreement, the City reserves the right to make an independent investigation into the background of Contractor's personnel who perform work required by this Agreement, including but not limited to their references, character, address history, past employment, education, social security number validation, and criminal or police records, for the purpose of confirming that such personnel are lawfully employed, qualified to provide the subject service or pose a risk to the safety of persons or property in and around the vicinity of where the services will be rendered or City Hall. If the City makes a reasonable determination that any of Contractor's prospective or then current personnel is deemed objectionable, then the City may notify Contractor of the same. Contractor shall not use that personnel to perform work required by this Agreement, and if necessary, shall replace him or her with a suitable worker.

6. Suspension or Termination.

a. The City may at any time, for any reason, with or without cause, suspend or terminate this Agreement, or any portion hereof, by serving upon the Contractor at least ten (10) days prior written notice. Upon receipt of such notice, the Contractor shall immediately cease all work under this Agreement, unless the notice provides otherwise. If the City suspends or terminates a portion of this Agreement such suspension or termination shall not make void or invalidate the remainder of this Agreement.

b. In the event this Agreement is terminated pursuant to this Section, the City shall pay to Contractor the actual value of the work performed up to the time of termination, provided that the work performed is of value to the City. Upon termination of the Agreement pursuant to this Section, the Contractor will submit an invoice to the City, pursuant to Section entitled "Method of Payment" herein.

7. Plans, Studies, Documents.

a. Ownership of Documents. All plans, studies, documents and other writings prepared by and for Contractor, its officers, employees and agents and subcontractors in the course of implementing this Agreement, except working notepad internal documents, shall become the property of the City upon payment to Contractor for such work, and the City shall have the sole right to use such materials in its discretion without further compensation to Contractor or to any other party. Contractor shall, at Contractor's expense, provide such reports, plans, studies, documents and other writings to City upon written request. City shall have sole determination of the public's rights to documents under the Public Records Act, and any third-party requests of Contractor shall be immediately referred to City, without any other actions by Contractor.

b. Licensing of Intellectual Property. This Agreement creates a nonexclusive and perpetual license for City to copy, use, modify, reuse, or sublicense any and all copyrights, designs, and other intellectual property embodied in plans, specifications, studies, drawings, estimates, and other documents or works of authorship fixed in any tangible medium of expression, including but not limited to, physical drawings or data magnetically or otherwise recorded on computer diskettes, which are prepared or caused to be prepared by Contractor under this Agreement ("Documents & Data"). Contractor shall require that all subcontractors agree in writing that City is granted a nonexclusive and perpetual license for any Documents & Data the subcontractor prepares under this Agreement. Contractor represents and warrants that Contractor has the legal right to license any and all Documents & Data. Contractor makes no such representation and warranty in regard to Documents & Data which were prepared by design professionals other than Contractor or provided to Contractor by the City. City shall not be limited in any way in its use of the Documents & Data at any time, provided that any such use not within the purposes intended by this Agreement shall be at City's sole risk.

c. Confidentiality. All ideas, memoranda, specifications, plans, procedures, drawings, descriptions, computer program data, input record data, written information, and other Documents & Data either created by or provided to Contractor in connection with the performance of this Agreement shall be held confidential by Contractor. Such materials shall not, without the prior written consent of City, be used by Contractor for any purposes other than the performance of the services under this Agreement. Nor shall such materials be disclosed to any person or entity not connected with the performance of the services under this Agreement. Nothing furnished to Contractor which is otherwise known to Contractor or is generally known, or has become known, to the related industry shall be deemed confidential. Contractor shall not use City's name or insignia, photographs relating to project for which Contractor's services are rendered, or any publicity pertaining to the Contractor's services under this Agreement in any magazine, trade paper, newspaper, television or radio production or other similar medium without the prior written consent of City.

8. Contractor's Books and Records.

a. Contractor shall maintain any and all ledgers, books of account, invoices, vouchers, canceled checks, and other records or documents evidencing or relating to charges for services, or expenditures and disbursements charged to City for a minimum period of three (3) years, or for any longer period required by law, from the date of final payment to Contractor to this Agreement.

b. Contractor shall maintain all documents and records which demonstrate performance under this Agreement for a minimum period of three (3) years, or for any longer period required by law, from the date of termination or completion of this Agreement.

c. Any records or documents required to be maintained pursuant to this Agreement shall be made available for inspection or audit, at any time during regular business hours, upon written request by the City Manager, City Attorney, City Auditor or a designated representative of these officers. Copies of such documents shall be provided to the City for inspection at City Hall when it is practical to do so. Otherwise, unless an alternative is mutually agreed upon, the records shall be available at Contractor's address indicated for receipt of notices in this Agreement.

d. Where City has reason to believe that such records or documents may be lost or discarded due to dissolution, disbandment or termination of Contractor's business, City may, by written request by any of the above-named officers, require that custody of the records be given to the City and that the records and documents be maintained in City Hall. Access to such records and documents shall be granted to any party authorized by Contractor, Contractor's representatives, or Contractor's successor-in-interest.

9. Independent Contractor.

a. Contractor is and shall at all times remain as to the City a wholly independent contractor pursuant to California Labor Code Section 3353. The personnel performing the services under this Agreement on behalf of Contractor shall at all times be under Contractor's exclusive direction and control. Neither City nor any of its officers, employees, or agents shall have control over the conduct of Contractor or any of Contractor's officers, employees, or agents, except as set forth in this Agreement. Contractor shall not at any time or in any manner represent that it or any of its officers, employees, or agents are in any manner officers, employees, or agents of the City. Contractor shall not incur or have the power to incur any debt, obligation, or liability whatsoever against City, or bind City in any manner.

b. Notwithstanding any other federal, state and local laws, codes, ordinances and regulations to the contrary and except for the fees paid to Contractor as provided in the Agreement, Contractor and any of its employees, agents, and subcontractors providing service under this Agreement shall not qualify for or become entitled to, and hereby agree to waive any claims to, any compensation, benefit, or any incident of employment by City, including but not limited to eligibility to enroll in PERS as an employee of City and entitlement to any contribution to be paid by City for employer contribution and/or employee contributions for PERS benefits.

10. PERS Eligibility Indemnification. In the event that Contractor or any employee, agent, or subcontractor of Contractor providing services under this Agreement claims or is determined by a court of competent jurisdiction or the California Public Employees Retirement System (PERS) to be eligible for enrollment in PERS as an employee of the City, Contractor shall indemnify, defend, and hold harmless City for the payment of any employee and/or employer contributions for PERS benefits on behalf of Contractor or its employees, agents, or subcontractors, as well as for the payment of any penalties and interest on such contributions, which would otherwise be the responsibility of City.

11. Interests of Contractor. Contractor (including principals, associates and professional employees) covenants and represents that it does not now have any investment or interest in real property and shall not acquire any interest, direct or indirect, in the area covered



by this Agreement or any other source of income, interest in real property or investment which would be affected in any manner or degree by the performance of Contractor's services hereunder. Contractor further covenants and represents that in the performance of its duties hereunder no person having any such interest shall perform any services under this Agreement.

Contractor is not a designated employee within the meaning of the Political Reform Act because Contractor:

a. will conduct research and arrive at conclusions with respect to his/her rendition of information, advice, recommendation or counsel independent of the control and direction of the City or of any City official, other than normal agreement monitoring; and

b. possesses no authority with respect to any City decision beyond rendition of information, advice, recommendation or counsel. (FPPC Reg. 18700(a)(2).)

12. Professional Ability of Contractor. City has relied upon the professional training and ability of Contractor to perform the services hereunder as a material inducement to enter into this Agreement. Contractor shall therefore provide properly skilled professional and technical personnel to perform all services under this Agreement. All work performed by Contractor under this Agreement shall be in accordance with applicable legal requirements and shall meet the standard of quality ordinarily to be expected of competent professionals in Contractor's field of expertise.

13. Compliance with Laws.

a. Contractor shall comply with all local, state and federal laws and regulations applicable to the services required hereunder, including any rule, regulation or bylaw governing the conduct or performance of Contractor and/or its employees, officers, or board members.

b. Contractor represents that it has obtained and will maintain at all times during the term of this Agreement all professional and/or business licenses, certifications and/or permits necessary for performing the services described in this Agreement, including a City business license.

14. Licenses. Contractor represents and warrants to City that it has the licenses, permits, qualifications, insurance and approvals of whatsoever nature which are legally required of Contractor to practice its profession. Contractor represents and warrants to City that Contractor shall, at its sole cost and expense, keep in effect or obtain at all times during the term of this Agreement, any licenses, permits, insurance and approvals which are legally required of Contractor to practice its profession. Contractor shall maintain a City of Lake Elsinore business license.

15. Indemnity. Contractor shall indemnify, defend, and hold harmless the City and its officials, officers, employees, agents, and volunteers from and against any and all losses, liability, claims, suits, actions, damages, and causes of action arising out of any personal injury, bodily injury, loss of life, or damage to property, or any violation of any federal, state, or municipal law or ordinance, to the extent caused, in whole or in part, by the willful misconduct or negligent acts or omissions of Contractor or its employees, subcontractors, or agents, by acts for which they could be held strictly liable, or by the quality or character of their work. The foregoing obligation of Contractor shall not apply when (1) the injury, loss of life, damage to property, or violation of

law arises from the sole negligence or willful misconduct of the City or its officers, employees, agents, or volunteers and (2) the actions of Contractor or its employees, subcontractor, or agents have contributed in no part to the injury, loss of life, damage to property, or violation of law. It is understood that the duty of Contractor to indemnify and hold harmless includes the duty to defend as set forth in Section 2778 of the California Civil Code. Acceptance by City of insurance certificates and endorsements required under this Agreement does not relieve Contractor from liability under this indemnification and hold harmless clause. This indemnification and hold harmless clause shall apply to any damages or claims for damages whether or not such insurance policies shall have been determined to apply. By execution of this Agreement, Contractor acknowledges and agrees to the provisions of this Section and that it is a material element of consideration.

16. Insurance Requirements.

a. Insurance. Contractor, at Contractor's own cost and expense, shall procure and maintain, for the duration of the contract, unless modified by the City's Risk Manager, the following insurance policies.

i. Workers' Compensation Coverage. Contractor shall maintain Workers' Compensation Insurance and Employer's Liability Insurance for his/her employees in accordance with the laws of the State of California. In addition, Contractor shall require each subcontractor to similarly maintain Workers' Compensation Insurance and Employer's Liability Insurance in accordance with the laws of the State of California for all of the subcontractor's employees. Any notice of cancellation or non-renewal of all Workers' Compensation policies must be received by the City at least thirty (30) days prior to such change. The insurer shall agree to waive all rights of subrogation against City, its officers, agents, employees and volunteers for losses arising from work performed by Contractor for City. In the event that Contractor is exempt from Worker's Compensation Insurance and Employer's Liability Insurance for his/her employees in accordance with the laws of the State of California, Contractor shall submit to the City a Certificate of Exemption from Workers Compensation Insurance in a form approved by the City Attorney.

ii. General Liability Coverage. Contractor shall maintain commercial general liability insurance in an amount not less than one million dollars (\$1,000,000) per occurrence for bodily injury, personal injury and property damage. If a commercial general liability insurance form or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to the work to be performed under this Agreement or the general aggregate limit shall be at least twice the required occurrence limit. Required commercial general liability coverage shall be at least as broad as Insurance Services Office Commercial General Liability occurrence form CG 0001 (ed. 11/88) or Insurance Services Office form number GL 0002 (ed. 1/73) covering comprehensive General Liability and Insurance Services Office form number GL 0404 covering Broad Form Comprehensive General Liability. No endorsement may be attached limiting the coverage.

iii. Automobile Liability Coverage. Contractor shall maintain automobile liability insurance covering bodily injury and property damage for all activities of the Contractor arising out of or in connection with the work to be performed under this Agreement, including coverage for owned, hired and non-owned vehicles, in an amount of not less than one million dollars (\$1,000,000) combined single limit for each occurrence. Automobile liability coverage must be at least as broad as Insurance Services Office Automobile Liability form CA 0001 (ed. 12/90) Code 1 ("any auto"). No endorsement may be attached limiting the coverage.

iv. Professional Liability Coverage. Contractor shall maintain professional errors and omissions liability insurance appropriate for Contractor's profession for protection against claims alleging negligent acts, errors or omissions which may arise from Contractor's services under this Agreement, whether such services are provided by the Contractor or by its employees, subcontractors, or sub consultants. The amount of this insurance shall not be less than one million dollars (\$1,000,000) on a claims-made annual aggregate basis, or a combined single limit per occurrence basis.

b. Endorsements. Each general liability and automobile liability insurance policy shall be with insurers possessing a Best's rating of no less than A:VII and shall be endorsed with the following specific language:

i. Notwithstanding any inconsistent statement in any required insurance policies or any subsequent endorsements attached thereto, the protection offered by all policies, except for Workers' Compensation, shall bear an endorsement whereby it is provided that, the City and its officers, employees, servants, volunteers and agents and independent contractors, including without limitation, the City Manager and City Attorney, are named as additional insureds. Additional insureds shall be entitled to the full benefit of all insurance policies in the same manner and to the same extent as any other insureds and there shall be no limitation to the benefits conferred upon them other than policy limits to coverages.

ii. This policy shall be considered primary insurance as respects the City, its elected or appointed officers, officials, employees, agents and volunteers. Any insurance maintained by the City, including any self-insured retention the City may have, shall be considered excess insurance only and shall not contribute with it.

iii. This insurance shall act for each insured and additional insured as though a separate policy had been written for each, except with respect to the limits of liability of the insuring company.

iv. The insurer waives all rights of subrogation against the City, its elected or appointed officers, officials, employees or agents.

v. Any failure to comply with reporting provisions of the policies shall not affect coverage provided to the City, its elected or appointed officers, officials, employees, agents or volunteers.

vi. The insurance provided by this Policy shall not be suspended, voided, canceled, or reduced in coverage or in limits except after thirty (30) days written notice has been received by the City.

c. Deductibles and Self-Insured Retentions. Any deductibles or self-insured retentions must be declared to and approved by the City. At the City's option, Contractor shall demonstrate financial capability for payment of such deductibles or self-insured retentions.

d. Certificates of Insurance. Contractor shall provide certificates of insurance with original endorsements to City as evidence of the insurance coverage required herein. Certificates of such insurance shall be filed with the City on or before commencement of performance of this Agreement. Current certification of insurance shall be kept on file with the City at all times during the term of this Agreement.

17. Notices. Any notice required to be given under this Agreement shall be in writing and either served personally or sent prepaid, first class mail. Any such notice shall be addressed to the other party at the address set forth below. Notice shall be deemed communicated within 48 hours from the time of mailing if mailed as provided in this section.

If to City:                      City of Lake Elsinore  
   Attn: City Manager  
   130 South Main Street  
   Lake Elsinore, CA 92530

With a copy to:                City of Lake Elsinore  
   Attn: City Clerk  
   130 South Main Street  
   Lake Elsinore, CA 92530

If to Contractor:              Elevator Support Services, Inc.  
   Attn: Don Hill  
   9245 Archibald Avenue  
   Rancho Cucamonga, CA 91730

18. Assignment and Subcontracting. The parties recognize that a substantial inducement to City for entering into this Agreement is the professional reputation, experience and competence of Contractor and the subcontractors listed in Exhibit B. Contractor shall be fully responsible to City for all acts or omissions of any subcontractors. Assignments of any or all rights, duties or obligations of the Contractor under this Agreement will be permitted only with the express consent of the City. Contractor shall not subcontract any portion of the work to be performed under this Agreement except as provided in Exhibit B without the written authorization of the City. If City consents to such subcontract, Contractor shall be fully responsible to City for all acts or omissions of those subcontractors. Nothing in this Agreement shall create any contractual relationship between City and any subcontractor nor shall it create any obligation on the part of the City to pay or to see to the payment of any monies due to any such subcontractor other than as otherwise is required by law.

19. Waiver. Waiver of a breach or default under this Agreement shall not constitute a continuing waiver of a subsequent breach of the same or any other provision under this Agreement.

20. Litigation Expenses and Attorneys' Fees. If either party to this Agreement commences any legal action against the other party arising out of this Agreement, the prevailing party shall be entitled to recover its reasonable litigation expenses, including court costs, expert witness fees, discovery expenses, and attorneys' fees.

21. Mediation. The parties agree to make a good faith attempt to resolve any disputes arising out of this Agreement through mediation prior to commencing litigation. The parties shall mutually agree upon the mediator and share the costs of mediation equally. If the parties are unable to agree upon a mediator, the dispute shall be submitted to JAMS or its successor in interest. JAMS shall provide the parties with the names of five qualified mediators. Each party shall have the option to strike two of the five mediators selected by JAMS and thereafter the mediator remaining shall hear the dispute. If the dispute remains unresolved after mediation, either party may commence litigation.

22. Prohibited Interests. Contractor maintains and warrants that it has not employed nor retained any company or person, other than a bona fide employee working solely for Contractor, to solicit or secure this Agreement. Further, Contractor warrants that it has not paid nor has it agreed to pay any company or person, other than a bona fide employee working solely for Contractor, any fee, commission, percentage, brokerage fee, gift or other consideration contingent upon or resulting from the award or making of this Agreement. For breach or violation of this warranty, City shall have the right to rescind this Agreement without liability. For the term of this Agreement, no member, officer or employee of City, during the term of his or her service with City, shall have any direct interest in this Agreement, or obtain any present or anticipated material benefit arising therefrom.

23. Equal Opportunity Employment. Contractor represents that it is an equal opportunity employer and it shall not discriminate against any subcontractor, employee or applicant for employment because of race, religion, color, national origin, handicap, ancestry, sex or age. Such non-discrimination shall include, but not be limited to, all activities related to initial employment, upgrading, demotion, transfer, recruitment or recruitment advertising, layoff or termination.

24. Prevailing Wages. Contractor is aware of the requirements of California Labor Code Section 1720, et seq., and 1770, et seq., as well as California Code of Regulations, Title 8, Section 16000, et seq., ("Prevailing Wage Laws"), which require the payment of prevailing wage rates and the performance of other requirements on "public works" and "maintenance" projects. Contractor agrees to fully comply with all applicable federal and state labor laws (including, without limitation, if applicable, the Prevailing Wage Laws). It is agreed by the parties that, in connection with the Work or Services provided pursuant to this Agreement, Contractor shall bear all risks of payment or non-payment of prevailing wages under California law, and Contractor hereby agrees to defend, indemnify, and hold the City, and its officials, officers, employees, agents, and volunteers, free and harmless from any claim or liability arising out of any failure or alleged failure to comply with the Prevailing Wage Laws. The foregoing indemnity shall survive termination of this Agreement.

25. Severability. If any term or portion of this Agreement is held to be invalid, illegal, or otherwise unenforceable by a court of competent jurisdiction, the remaining provisions of this Agreement shall continue in full force and effect.

26. Controlling Law Venue. This Agreement and all matters relating to it shall be governed by the laws of the State of California and any action brought relating to this Agreement shall be held exclusively in a state court in the County of Riverside.

27. Authority to Enter Agreement. Contractor has all requisite power and authority to conduct its business and to execute, deliver, and perform the Agreement. Each party warrants that the individuals who have signed this Agreement have the legal power, right, and authority to

make this Agreement and to bind each respective party. The City Manager is authorized to enter into an amendment or otherwise take action on behalf of the City to make the following modifications to the Agreement: (a) a name change; (b) grant extensions of time; (c) non-monetary changes in the scope of services; and/or (d) suspend or terminate the Agreement.

28. Counterparts. This Agreement may be executed in several counterparts, each of which shall constitute one and the same instrument and shall become binding upon the parties when at least one copy hereof shall have been signed by both parties hereto. In approving this Agreement, it shall not be necessary to produce or account for more than one such counterpart.

29. Entire Agreement; Incorporation; Conflict. This Agreement contains the entire understanding between the parties relating to the obligations described herein. All prior or contemporaneous understandings, agreements, representations and statements, oral or written, are superseded in total by this Agreement and shall be of no further force or effect. Contractor's Proposal is incorporated only for the description of the scope of services and/or the schedule of performance and no other terms and conditions from such proposal shall apply to this Agreement unless specifically agreed to in writing. In the event of conflict, this Agreement shall take precedence over those contained in the Contractor's Proposal.

30. Amendments. This Agreement may be modified or amended only by a written document executed by both Contractor and City and approved as to form by the City Attorney.

[Signatures on next page]

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed on the date first written above.

“CITY”

CITY OF LAKE ELSINORE, a municipal corporation

“CONTRACTOR”

Elevator Support Services, Inc., a corporation

\_\_\_\_\_  
City Manager

\_\_\_\_\_  
By: Don Hill

Its: Owner/Head of Operations

ATTEST:

\_\_\_\_\_  
City Clerk

APPROVED AS TO FORM:

\_\_\_\_\_  
City Attorney

\_\_\_\_\_  
Assistant City Manager

Attachments: Exhibit A – Contractor’s Proposal  
Exhibit B – List of Subcontractors

EXHIBIT A  
CONTRACTOR'S PROPOSAL  
[ATTACHED]



EXHIBIT B  
LIST OF SUBCONTRACTORS  
[ATTACHED]



January 8, 2024

Proposal # 2024-4343-M

**CUSTOMER**

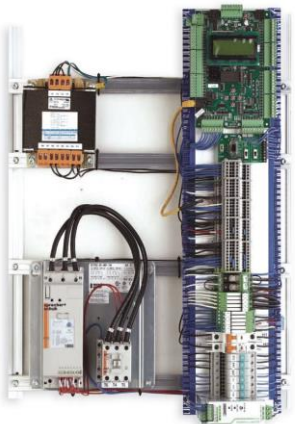

City of Lake Elsinore  
130 S. Main Street  
Lake Elsinore, CA 92530  
ATT: Gus Papagolos  
gpapagolos@verizon.net


**PROJECT LOCATION**


Rosetta Park  
39423 Ardenwood Way  
Lake Elsinore, Ca 92530

This modernization estimate shall include material and labor to install the following equipment on elevators:

**Elevator State ID #171519**

<b>CONTROLS / ALFA or SMARTRISE NON-PROPRIETARY CONTROLLER</b>	
<ul style="list-style-type: none"><li>-New Microprocessor-based control system.</li><li>-Onboard diagnostics (No unique service tool required).</li><li>-New solid-state starter.</li><li>-New machine room wiring.</li><li>-New hatch wiring.</li><li>-New car wiring.</li><li>-New solid-state leveling unit assembly.</li><li>-Customers will have a copy of their backup software.</li></ul>	
<b>HYDRAULIC POWER UNIT (RETAIN)</b>	
<p>We have included a \$75,000 Jack replacement in this proposal, due to the rust from the water. If deemed unnecessary, \$75,000 will be deducted from the total price.</p>	

<b>FIXTURES</b>	<b>Innovation</b>
<ul style="list-style-type: none"> <li>-Replace existing (COP) Car-Orating panel with new stainless (COP) integrated with ADA phone, emergency light, ADA braille tags, and digital floor position indicator.</li> <li>-Install 4" braille tags on hall door jambs.</li> <li>-Install new Car Direction Lanterns (CDL) on car jamb.</li> <li>-Install control system to provide passing floor tone for ADA compliance.</li> <li>-Install new surface-mount hall fixtures (ADA) pushbuttons.</li> </ul>	

<b>DOOR EQUIPMENT</b>	<b>GAL MOVFR</b>
<ul style="list-style-type: none"> <li>-Install a new solid-state closed-loop door operator.</li> <li>-Install a new car door clutch assembly.</li> <li>-Install a new car door safety restrictor to prevent passengers from trying to climb out.</li> <li>-Install a new hall and car door tracks.</li> <li>-Install a new electronic inferred door detector to reverse doors.</li> </ul>	

Pictures are for illustration purposes only. Actual materials may vary due to specific applications.

Handrails	Retain
Hall door panels	Retain
Hall and car door hanger tracks and interlocks	New
Sight guards	Retain
Electronic door detector	New
Door zone restrictor lock	New
Car top inspection unit	New
Solid-state leveling unit	New
Hall fixtures (ADA) pushbuttons	New
Hydraulic pump/power unit	New
Solid-state motor starter	New
Cab door panel	Retain
Underground jack assembly	Retain

## **MODERNIZATION SUMMARY**

- Once the elevator has been removed from service, the elevator cannot be operated for any reason until the State of California has completed the final inspection.
- This estimate is based on "Group 4" elevator compliance.
- This price includes all material, labor, sales tax, permit, and inspection fees. The Customer is required to pay any additional re-inspection fees due to any deficiencies due to the fire alarm system, fire sprinkler, building site code requirements failing during initial inspection.
- This price is based on work being performed on standard working days during regular working hours.
- The elevator is estimated to be out of service for 12-15 working days plus inspection.  
The inspection date depends on the availability of the city or state inspectors.
- Owner to be responsible for all state and city inspection fees and billed separately.

## **WORK DONE BY OTHERS**

- Air conditioning in the elevator machine room if necessary, the temperature should be between (60-95 degrees).
- Any cutting, patching, structural, or finish work where fixtures, braille, tank unit, or handrails are or were installed. (Surface mount fixtures will be installed in the hallway and should cover most if not all of the existing holes).
- Provide one active phone line to the elevator machine room.
- If any additional work is required outside this listed scope of work, it will be billed and approved separately.
- The estimated time from approval to getting material on hand is 10-12weeks. Then the work will be scheduled.
- ESS shall require from the Customer three (3) electrical inputs from a customer supplied fire Alarm system. If you do not have a fire alarm system (monitored), you may likely be able to have A qualified fire alarm company provides a "stand-alone" panel for the elevator system. One circuit shall be provided from the elevator machine room smoke or heat sensor. One circuit shall be provided from the primary floor smoke or heat sensor. The last circuit shall be from all other floor smoke or heat sensors. In the event that sprinkler heads are found in the hoistway area, the Customer would be responsible for upgrade codes requiring outside access panels within 24" of existing sprinkler head and new smoke or heat detector along with a new circuit for the fire alarm system.
- Provide a 3 phase fused lockable disconnect switch per code if needed.
- Provide necessary sprinkler modifications if sprinklers are in the elevator shaft.
- Provide 110VAC 15amp GFI supply for cab light and elevator pit.
- Provide lockable fused disconnect for cab lighting.

## **GENERAL TERMS AND CONDITIONS**

- 1) It is agreed that Elevator Support Services (hereinafter referred to as Company) does not assume possession, management or control of any part of the equipment, or premises, but such remains the Customers exclusively. We shall not be liable for any loss, damage, or delay caused by the non-operation of the equipment. Under no circumstances shall our Company be liable for consequential damages or damage caused by negligence of others, whether arising under Contract or tort.
- 2) No failure or omission by either party hereto in the performance of any obligation contained in this agreement shall be deemed a breach hereof if the same shall arise from any causes beyond the control and without fault or negligence of such party, including, but not restricted to, acts of any governmental agency or instrumentality thereof, fire, storm, flood, earthquake, explosion, accident, acts of the public enemy, war, rebellion, insurrection, riot, sabotage, epidemic, quarantine, restrictions, lockout, a dispute with workmen, labor shortages, transportation embargoes, failure or delays in the delivery of any transportation facility, product of material necessary to the performance hereof, provided, however, that either party shall continue performance with any party claiming and such cause for any failure or omission hereunder shall upon request give prompt notice thereof to the other party.
- 3) Customer agrees to pay, in addition to the price herein quoted, the amount of any tax based upon the transfer, use, ownership or possession of the equipment herein described, imposed by the law, enacted after the date of this proposal, or imposed by any existing law.
- 4) It is agreed that the workman shall be given a safe place in which to work and store material. Our Company reserves the right to discontinue work in the building whenever, in our opinion, this provision is being violated.
- 5) Unless otherwise stated herein, the work shall be performed during the regular working hours of the regular working days of the Company. If overtime work is mutually agreed upon and performed, an additional charge thereof, at usual rates for such work, shall be added to the contract price.
- 6) The Customer agrees that if delivery is not taken at the building of the equipment and materials covered by this Contract when notification of readiness is made, Customer will immediately pay the contract price less payments previously made, and designate some local point where delivery will be taken. Unless such point of delivery is designated within 48 hours, our Company may warehouse the equipment and material within or without their facility at your risk. The Customer shall reimburse Company for all costs due to extra handling and warehousing.
- 7) Should our Company be delayed by reason of any default on the customers part, the entire contract price, less payments heretofore made, shall become due immediately, and shall thereafter bear interest at the full legal rate. Should we incur any collection or legal fees resulting from your failure to meet the standard payment schedule, you agree to reimburse us in full for such expenses.
- 8) It is expressly agreed that all the apparatus furnished hereunder can be removed without material injury to the freehold, and our Company retains the title hereto until final payment in cash is made with the right to retake possession of the same or any part thereof at customers cost if the default is made on any of the payments, irrespective of the manner of attachment to the reality, the acceptance of notes, extension of time for payment, or the sale, mortgage, or lease of the premises.
- 9) Any provision of this agreement prohibited by law shall be ineffective (only to the extent of and wherever such prohibition shall be applicable) without invalidating any other provision hereof.

10) It is expressly agreed that the California commercial code shall govern this agreement, including labor, material, and any other services, as well as payment thereof.

11) Should any litigation arise resulting from this Contract, it will be tried in the court of jurisdiction in Los Angeles City or County. If the amount in controversy exceeds the jurisdiction of the court, the matter shall be submitted to arbitration, and the finding by the arbitrator shall be binding and conclusive of the matter. The prevailing party shall be entitled to reasonable attorney fees and costs.

12) We warrant that all services furnished will be performed in a workmanlike manner. We also warrant that any equipment provided hereunder shall be free from defects in workmanship and material. Our sole responsibility under this warranty shall be at our option to correct any defective services and to either repair or replace any component of the equipment found to be defective in workmanship or material provided that written notice of such defects shall have been given to us by you within ninety (90) days without monthly service contract and/or one year, (365 days), with service contract through ESS, after completion of the work or such longer period as may be indicated on the front of this form. All defective parts that are removed and replaced by us shall become our property. We do not agree under this warranty to bear the cost or repairs or replacements due to vandalism, abuse, misuse, neglect, normal wear and tear, modifications not performed by us, improper or insufficient maintenance by others, or any causes beyond our control.

We shall conduct, at our own expense, the entire defense or any claim, suit or action alleging that, without further combinations, that use by you of any equipment provided hereunder directly infringes any patent, but opportunity and authority to assume the sole defense thereof, including settlement and appeals, and all information available to you for such defense; (b) said equipment is made according to a specification or design furnished by us; and (c) the claim, suit or action is brought against you. Provided all of the foregoing conditions have been met, we shall, at our own expense, either settle said claim, suit or action or shall pay all damages excluding consequential damages and costs awarded by the court therein and, if the use of resale equipment is finally enjoined, we shall at our option, (i) procure for you the right to use the equipment, (ii) replace the equipment with equivalent non-infringing equipment, (iii) modify the equipment, so it becomes non-infringing but equivalent, or (iv) remove the equipment and refund the purchase price (if any) less a reasonable allowance for use, damage, and obsolescence.

THE EXPRESS WARRANTIES SET FORTH IN THIS ARTICLE 12 ARE THE EXCLUSIVE WARRANTIES GIVEN; WE MAKE NO OTHER WARRANTIES EXPRESS OR IMPLIED, AND SPECIFICALLY MAKE NO WARRANTY OF MERCHANTABILITY OR OF FITNESS FOR ANY PARTICULAR PURPOSE, AND THE EXPRESS WARRANTIES SET FORTH IN THE ARTICLE ARE IN LIEU OF ANY SUCH WARRANTIES AND ANY OTHER OBLIGATION OR LIABILITY ON OUR PART.

Entire Contract

*This document shall become a valid contract only when accepted by the Customer and subsequently by an officer of the Company, and shall constitute the entire agreement between the parties. All representations on which this Contract is based have been expressly set out in this agreement. No agent, representative, or employee shall have the authority to waive any provision of this document. The customer's failure to adhere to the above-recommended policies will nullify the Company's liability under this Contract.*

**TOTAL PRICE**

**\$209,500.00** (Two hundred nine thousand five hundred dollars).

**terms of Payment**

1. 30% upon acceptance
2. 30% upon material delivery
3. 30% upon completion
4. 10% passing final State inspection

Respectfully submitted,



Don Hill  
Elevator Support Services, Inc.  
Owner/Head of Operations

**Elevator Support Services Approved**

Print: \_\_\_\_\_

For: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Signature: \_\_\_\_\_

**Customer Accepted**

Print: \_\_\_\_\_

For: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Signature: \_\_\_\_\_

This proposal is good for 60 days

*Contractors are required by law to be licensed and regulated by the Contractors State License Board.  
Any questions concerning a contractor may be referred to the board whose address is:*

*Contractors State License Board  
9821 Business Park Drive  
Sacramento, CA 95827*