



RE: Elevator Service Contract Agreement

Background:

Both the Nixa Community Center and Nixa City Hall have elevators within the buildings. We have had service contracts in place with TK Elevator Corporation for the servicing, inspecting, and maintenance for several years. This service agreement helps to ensure our elevators are always in proper working and safe for use within our facilities.

Analysis:

This year is final renewal year we have with the current agreement and we have worked with TK Elevator Corporation to develop a new maintenance service agreement that is before you today. Both elevators in our facilities are TK elevators thus making them a proprietary product to this company. Staff contacted the other companies within the Springfield service area (KONE, MEI-Total Elevator Solutions, and Otis Elevator Company) all companies suggested working with the manufacturing company for a service agreement as the manufacturing company would be the best versed, most specifically trained, and best equipped to handle their product. Thus, we have been working with TK Elevator for a new service contract.

Recommendation:

Staff is recommending approval of this resolution to enter into a contract with TK Elevator Corporation for the continued servicing, maintenance, and inspection of the elevators at both the Nixa Community Center and Nixa City Hall.

MEMO SUBMITTED BY:

Matt Crouse | Director, Parks and Recreation

mcouse@nixa.com | 417-725-5486

RESOLUTION NO. 2022-126

1 **A RESOLUTION OF THE COUNCIL OF THE CITY OF NIXA AUTHORIZING THE CITY**
2 **ADMINISTRATOR TO EXECUTE A CONTRACT WITH TK ELEVATOR**
3 **CORPORATION FOR ELEVATOR SERVICE, MAINTENANCE, AND INSPECTION**
4 **SERVICES.**

5 _____
6
7 **WHEREAS** City staff have solicited a proposal from TK Elevator Corporation for
8 service, maintenance, and inspections of the Nixa Community Center elevator, and Nixa
9 City Hall elevator; and

10
11 **WHEREAS** TK Elevator qualifies as a sole source provider; and

12
13 **WHEREAS** City Council desires to authorize the execution of the Contract,
14 attached hereto as "Resolution Exhibit A," for the purpose described therein.

15
16 **NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF**
17 **NIXA, AS FOLLOWS, THAT:**

18
19 **SECTION 1:** The City Administrator, or designee, is hereby authorized to execute
20 the Contract attached hereto, and incorporated herein by this reference, as "Resolution
21 Exhibit A," with TK Elevator Corporation. Said Contract shall be in substantially similar
22 form as the document attached hereto as "Resolution Exhibit A."

23
24 **SECTION 2:** The City Administrator and the officers of the City are hereby
25 authorized to do all things necessary or convenient to carry out the terms and intent of
26 this Resolution.

27
28 **SECTION 3:** This Resolution shall be in full force and effect from and after its final
29 passage by the City Council and after its approval by the Mayor, subject to the provisions
30 of section 3.11(g) of the City Charter.

31
32
33 **ADOPTED BY THE COUNCIL THIS 12th DAY OF December, 2022.**

34
35 ATTEST:

36
37 _____
38 PRESIDING OFFICER

37 _____
38 CITY CLERK

39
40
41 **APPROVED BY THE MAYOR THIS _____ DAY OF _____, 2022.**

42
43 ATTEST:

44
45 _____
46 MAYOR

45 _____
46 CITY CLERK

RESOLUTION NO. 2022-126

47

48

49 APPROVED AS TO FORM:

50

51

52 _____
CITY ATTORNEY

Gold Service Agreement



Nixa Community Center

September 29, 2022

Purchaser: Nixa Community Ctr
 Address: PO Box 395
 Nixa, MO 65714-0395

Location: Nixa Community Center
 Address: 701 N Taylor Way
 Nixa, MO 65714-8751

TK Elevator Corporation ("TK Elevator Corporation," "TK Elevator," "we," "us," and "our"), agrees with Purchaser ("Purchaser," "you," and "your"), to maintain the equipment described below in accordance with the terms and conditions of this agreement ("the Agreement") with the goal of maximizing its performance, safety, and life span. TK Elevator and Purchaser may hereinafter be referred to individually as a "Party" or collectively as the "Parties."

This Agreement covers the units described in the table below (individually a "Unit" or collectively the "Units").

Equipment Type	Nickname	Legal ID	OEM Serial #	Stops	Controller Manufacturer	MAX Eligible
Hydraulic	LOBBY 1	11249	EM9232	2	Dover	Yes
Residential / Chairlift	LIFT	5027	0907WLSB144 2179737LW	2	Wheelovator	No

Please refer to the exhibit entitled "Equipment to be Maintained" for the address of each Unit listed in the table above.

Scope of Work

Service Visits

TK Elevator will visit the Units described above to examine, maintain, adjust and lubricate the equipment covered by this Agreement as necessary to promote the proper operation of those Units and will repair or replace any covered components if the repair or replacement is, in TK Elevator's sole opinion, necessitated by normal wear and tear or is not otherwise excluded by this Agreement ("Service Visits"). These Service Visits will be performed Monday to Friday, 8:00 AM to 4:30 PM except during scheduled holidays ("Regular Time"). All work performed before or after Regular Time shall be considered overtime ("Overtime").

TK Elevator will examine covered parts and components of the Unit(s) including:

- Control and landing positioning systems
- Signal fixtures
- Machines, Drives, Power units, pumps, valves, and above-ground jacks
- Car and hoistway door operating devices and door protection equipment
- Loadweighers
- Safety mechanisms

In order to ensure optimum operation, TK Elevator will also:

- Lubricate covered parts and components for smooth and efficient performance
- Adjust covered parts and components to promote safe operation

Service Visits Include TK Elevator's Maintenance Control Program

TK Elevator performs all work covered by this Agreement in accordance with the version of ASME A17.1 that is, according to the relevant authority having jurisdiction, applicable to the Unit(s) at the time the Agreement is first fully executed by both Parties. Section 8.6 of that code currently requires Unit owners to have a Maintenance Control Program ("MCP"). TK Elevator's MCP meets or exceeds section 8.6 of that code. Our MCP incorporates TK Elevator's

Gold Service Agreement



Basic Elevator and Escalator Procedures Manual listing the processes we follow when performing those maintenance, repair, replacement and testing services that are specifically described as included in this Agreement. Our MCP also includes TK Elevator's Maintenance Tasks & Records documentation to record the performance of those tasks. This Agreement does not include any work mandated as a consequence of changes to that code after this Agreement is executed.

Service Requests

This Agreement also includes the dispatch of our technician to address minor adjustments to, and the release of any entrapped passengers from, a Unit during Regular Time ("Service Requests"). Service Requests may be made from one or more of the following: you or your representative, the building or building's representative, emergency personnel, and/or passengers through the Unit's communication device and/or from any applicable remote monitoring device attached to the Unit if monitored by TK Elevator.

We will respond to Service Requests during Regular Time, as defined above, at no additional charge.

Overtime Service Requests are those Service Requests performed in whole or in part before or after Regular Time ("Overtime Service Requests"). On all Overtime Service Requests, you will be responsible for all labor costs including travel time, travel expenses, and time spent on the job. Such costs will be invoiced at our standard Overtime billing rates.

Testing

Equipment Testing

This agreement includes only the following tests:

- those annual safety tests for your lift Units covered by this Agreement

Should your Unit(s) require any additional type of equipment testing as required by any applicable law and/or code, we will provide you with a separate written estimate that includes the cost of any associated labor and/or material(s).

Should your Unit(s) require any safety tests as mandated by any applicable law and/or code on the commencement date of this Agreement, TK Elevator assumes no responsibility for the day-to-day operation of the governor or safeties on applicable traction elevators, or the hydraulic system on applicable hydraulic elevators under the terms of this Agreement until the test has been completed and the Unit has passed. Should the respective Unit fail any of those tests, it shall be solely your responsibility to make necessary repairs and place the Units in a condition that we deem acceptable for further coverage under the terms of this Agreement. Because the performance of any safety test places the Unit under extreme conditions that are outside of the Unit's normal operating parameters, you agree that TK Elevator shall not be liable for any damage to the building structure or the Unit(s) resulting from the performance of any safety tests we perform at any time under this Agreement.

Should your jurisdiction require the presence of either the applicable authority having jurisdiction or a third party witness at the time of testing, you agree to pay for any costs of that individual along with any inspection/coordination fees.

Firefighters' Service Testing

Should your Unit(s) be equipped with a phase I and phase II firefighters' service feature, all testing, record-keeping and record storage obligations associated with that feature that are required by any applicable law or code are expressly excluded from this Agreement and shall remain solely your responsibility to satisfy. The first time that your testing of that feature following the full execution of this Agreement reveals that it is not operating properly, you shall immediately remove the Unit from operation, immediately notify TK Elevator of the condition, and agree to remain responsible for all costs associated with any repairs necessary to return that feature to full and proper operation in accordance with any applicable law or code.

Exclusions

Gold Service Agreement



Service Visits, Service Requests, and Overtime Service Requests do not include: the removal or retrieval of items unrelated to the operation of the Unit(s) from the pit, machine room, or hoistway; the dispatching of any technician that results in the discovery by that technician that the Unit is either functioning on independent service or firefighters' service or that the Unit is operating properly but the stop button or stop function has been engaged by others; any request or obligation to address any condition associated with a part or component specifically excluded or not covered elsewhere in this Agreement; and/or any request or obligation to service, repair, replace any components or address any condition caused in whole or in part by any one or more of the following: anyone's abuse, misuse and/or vandalism of the equipment; anyone's negligence in connection with the use or operation of the equipment; dust or debris; any loss of power, power fluctuations, power failure, or power surges that in any way affect the operation of the equipment; oxidization, rust, or other conditions caused in whole or in part by the environment in which the affected component is located; fire, smoke, explosions, water, storms, wind, and/or lightning; any acts of God; acts of civil or military authorities, strikes, lockouts, other labor disputes, riot, civil commotion, war, malicious mischief, or theft; or any other reason or cause beyond our control that affects the use or operation of the Unit ("Billable Work"). On all Billable Work you will be solely responsible for the cost of all parts or materials along with all labor invoiced at TK Elevator's standard billing rates (whether Regular Time or Overtime depending on when the Billable Work is performed) including travel time (calculated roundtrip from the dispatching location to the Unit location and return), travel expenses, and time spent on the job.

In addition to the Billable Work described above, we also do not cover (A) the examination, maintenance, adjustment, refinishing, repair or replacement of the following components and/or systems: any cosmetic, construction, or ancillary components of the elevator or escalator system, including the cab enclosure, ceiling frames, panels, and/or fixtures, hoistway door panels, door frames, swing door hinges and closing devices, sills, car flooring, floor covering, lighting fixtures, ceiling light bulbs and tubes, balustrades, and wellway enclosures; any electrical components including main line power switches, breaker(s) or feeders to controller; sealed machine bearings; any below-ground or partially unexposed components of any hydraulic elevator system including, but not limited to, jack/cylinder, piston, PVC and/or other protective material of any type or kind; any below-ground or partially unexposed piping of any type or kind; any signage of any type or kind including but not limited to, signs, placards, and/or braille; any fire-suppression or fire-detection equipment of any type or kind including, but not limited to, smoke detectors, fire sensors, and/or sprinklers and associated piping; any communication, security, entertainment, and/or advertising devices including, but not limited to, kiosks or touchscreen displays and/or card readers; any batteries for emergency lighting and emergency lowering; or any environmental control devices including, but not limited to, air conditioners, heaters, ventilation fans, humidifiers, de-humidifiers, and/or pit or sump pumps; or (B) the repair, refurbishing, rebuilding, and/or replacement of any motor generators; or (C) the replacement or alignment of elevator guide rails; or (D) any other items or tasks specifically excluded elsewhere in this Agreement.

With the passage of time, equipment technology and designs will change. If (1) any part or component of your equipment covered under this Agreement cannot, in TK Elevator's sole opinion, be safely repaired and (2) a brand new direct replacement is no longer in stock and readily available from the Original Equipment Manufacturer ("OEM"), that part or component shall be considered obsolete, regardless of whether it can be custom-made, fabricated or acquired at any price or whether or not a refurbished or reconditioned version is available from anyone. You will be responsible for all charges associated with replacing that obsolete part or component as well as all charges required to ensure that the remainder of the equipment associated with that Unit is functionally compatible with that replacement part or component

In addition, we will not be required to make any changes or recommendations in the existing design or function of the Unit(s) nor will we be obligated to install new attachments or parts upon the equipment as recommended or directed by insurance companies, governmental agencies or authorities, or any other third party.

Digital Customer Experience

MAX - Digital Maintenance

MAX is a cloud-based Internet of Things ("IOT") platform that we, at our election, may connect to your Unit(s) by installing a remote-monitoring device (a "Device"). Purchaser consents and authorizes TK Elevator to (1) access Purchaser's premises to install a Device to the Unit(s) and thereafter maintain and/or repair the Device(s) and (2) to collect, store, maintain, own, use, delete, and/or destroy any or all of the data generated by the Device(s). Any Device,

Gold Service Agreement



once installed, is not intended, nor should it be considered, as a fixture. Instead, TK Elevator shall retain the right to remove the Device from any Unit(s) and/or cease any data collection and/or analysis at any time at its sole discretion. Moreover, TK Elevator shall retain the exclusive right and ability to, at its sole discretion, remove, delete and/or destroy all associated data generated from the Device(s). Because the Device contains trade secrets belonging to TK Elevator and is being installed for the sole use and benefit of our personnel, Purchaser agrees not to permit Purchaser's own personnel or any third parties to use, access, tamper with, relocate, copy, alter, destroy, disassemble or reverse engineer the Device or its data. The installation of any Device on a Unit shall not confer any rights or operate as an assignment or license to you of any patents, copyrights or trade secrets with respect to the Device and/or any software contained or embedded therein or that it utilizes/utilized in connection with the collection, monitoring and/or analysis of data.

With a MAX device connected to your equipment, at no additional charge, information obtained via machine learning may be sent to our technicians to promote early diagnosis, faster fixes and reduced downtime.

TK Elevator offers an additional menu of services available as outlined in the attached MAX Exhibit for your consideration and acceptance at an additional fee. The services you select will be governed by the terms and conditions of this Agreement to the extent that they do not conflict with the terms and conditions of the MAX Exhibit. In the event of a conflict, the terms and conditions of the MAX Exhibit will exclusively govern the subject matter of those terms and conditions.

Customer Web Portal and Mobile App

TK Elevator provides a web-based customer portal (the "CP") and mobile application (the "App") which, following the effective date of this Agreement, may contain certain maintenance and service call data associated with the Unit(s). To the extent applicable, TK Elevator will provide Purchaser with a user name and password to access the CP and App platforms. Purchaser shall, at its sole cost, provide and ensure the functioning integrity of its own hardware, software and internet connection necessary to access the CP and App. To the extent applicable, TK Elevator reserves the right to restrict Purchaser's access to the CP and App if any of Purchaser's accounts with TK Elevator has an outstanding unpaid balance greater than 30 days or in the event of anticipated or pending litigation of any kind. TK Elevator reserves the right to discontinue the CP and App altogether at its sole discretion and without notice to Purchaser and Purchaser expressly agrees to release TK Elevator from any and all claims of any type or kind arising out of or related to that discontinuation.

TK Elevator Communications

You may supplement this Agreement with an additional suite of services through our TK Elevator Communications call center at an additional fee contingent upon your agreement to all of the terms and conditions as set forth in the attached exhibit entitled "TK Elevator Communications Services." These additional available services involve the provision of 24/7/365 monitoring of your Units' code-compliant and compatible emergency telephone and in-cab video and text communication equipment (the "Communication Equipment"), the dispatch of a TK Elevator technician or emergency personnel under certain circumstances, the provision of a cellular connection for that Communication Equipment, and limited repair/replacement coverage for that Communication Equipment which is otherwise excluded from this Agreement.

Contract Term, Price, Available Discounts & Payment

Term

This Agreement is effective for 36 months starting November 01, 2022. To ensure continuous service, this Agreement will be automatically renewed for successive 1 -month periods unless either Party timely serves written notice on the other Party of its intention to cancel at least 30-Days but not more than 60 days before the end of the initial 36 - month period or at least 30-Days before the end of any subsequent 1 -month renewal period. Notice shall be sent by certified mail, return receipt requested to the TK Elevator office address found in this Agreement. Time is of the essence.

Price

Gold Service Agreement



The price for the services as stated in this Agreement shall be \$320.00 per month, inclusive of all applicable sales and use taxes, payable quarterly in advance. The billed amount may vary based on discounts as accepted by Purchaser's initials below and adjustments referenced in this Agreement that are applied throughout the life of the Agreement.

Available Discounts

Payment Plan

Billing Frequency	Discount %	Monthly Discount \$	Initial to Select
Annual	4%	\$12.8	
Semi Annual	2%	\$6.4	
Quarterly	No Change	\$0	Current Selection

Contract Term

Extended Term (Years)	Discount %	Monthly Discount \$	Initial to Select
Seven (7)	2%	\$6.4	
Ten (10)	4%	\$12.8	
Fifteen (15)	8%	\$25.6	

We have included the following Digital Service Package notated below for the selected units below for an additional price of \$10.00 per month which will be billed to you separately from the price of the Agreement and will be noted as a "MAX Charge" on the invoice. The cost of the selected Digital Service Package is not subject to any discounts. See the MAX Exhibit for details or to change this selection.

We reserve the right to increase all charges under this Agreement not to exceed a total of 5.00% annually.

Payment

Payments are due 45 days from the date marked on each of your TK Elevator invoices. If you do not timely pay any sum due to TK Elevator related to your Units described in this Agreement, regardless of whether it is billed pursuant to this Agreement or any other agreement with us, within the stipulated payment term calculated from the billing date, we may also choose to do one or more of the following:

- deem that you have permanently forfeited any discounts you may be entitled to associated with your payment plan/billing frequency for this Agreement, and/or
- suspend all services until all amounts due have been paid in full, and/or
- declare all sums for the unexpired term of this Agreement due immediately as liquidated damages and terminate our obligations under this Agreement

A service charge of the highest rate allowed by law shall apply to all overdue accounts you have with TK Elevator that are in any way related to any of the Unit(s) described in this Agreement. If TK Elevator elects to suspend service, we shall not be responsible for personal injury, death, damage to property (including damage to the Units) or losses of any other type or kind that is in any way related to TK Elevator's suspension of service. Upon resumption of service, you will be responsible for payment to TK Elevator for all costs we incur that result from our suspension of service and to remedy any damage caused to your equipment during that time. Time is of the essence.

TK Elevator reserves the right to assign payments owed to TK Elevator under this Agreement. If for any reason this Agreement is terminated prior to the end of the current term, a condition of such termination shall be that you agree to pay us the full amount of the any discount you received during the initial and any subsequent term. This is in addition to and not in lieu of any other rights or remedies we may have under this Agreement and the law.

Purchaser's Responsibilities

You agree to instruct or warn passengers in the proper use of the Unit(s) and to keep them under continued surveillance by competent personnel to detect irregularities between our examinations. You agree to immediately report any condition that may indicate the need for correction before the next regular examination. You agree to immediately shut down the Unit(s) upon manifestation of any irregularities in either the operation or the appearance of the Unit(s), to immediately notify us, and to keep the Unit(s) shut down until the completion of any repairs. Under those circumstances you agree not to re-set the mainline disconnect. In the event of a Service Request where our technician finds that the mainline disconnect has been reset, you agree that you will be responsible for all labor costs associated with that Service Request invoiced at TK Elevator's standard billing rates (whether Regular Time or Overtime depending on when we respond to that Service Request) including travel time (calculated roundtrip from the

Gold Service Agreement



dispatching location to the Unit location and return), travel expenses, and time spent on the job. You agree to give us immediate verbal notice and written notice within ten (10) days after any occurrence or accident in or about the Unit(s). You agree to provide our personnel with a safe place to work. You agree to provide a suitable machine room, including secured doors, waterproofing, lighting, ventilation, and appropriate air temperature control to maintain that room at a temperature between 50°F and 90°F. You agree to provide properly maintained and functioning mainline disconnect(s). You agree to maintain the elevator pit in a dry condition at all times. Should water or other liquids become present, you are responsible for the cost associated with the removal and the proper handling of such liquids. You agree that if TK Elevator's inspection of a Unit serviced under this Agreement reveals an operational problem which, in TK Elevator's sole judgment, jeopardizes the safety of the riding public, TK Elevator may shut down the Unit until such time as the operational problem is resolved. In that event, TK Elevator will immediately advise you in writing of such action, the reason for such action, and whether any proposed solution is covered by the terms of this Agreement.

TK Elevator assumes no responsibility for any part of the Unit(s) except that upon which work has been performed under this Agreement. No work, service, examination or liability on the part of TK Elevator other than that specifically mentioned herein is included or intended. It is agreed that TK Elevator does not assume possession or control of any part of the Unit(s) and that such remains Purchaser's exclusively as owner, lessor, lessee, possessor, or manager thereof.

We reserve the right to discontinue work in the building whenever, in our sole opinion, our personnel do not have a safe place to work. For safety reasons, you agree not to permit others to make alterations, additions, adjustments, or repairs or replace any component or part of the Unit(s) during the term of this Agreement. You agree to accept our judgment as to the means and methods employed by us for any corrective work under this Agreement.

Upon the commencement of this Agreement and as a condition of TK Elevator's performance of its obligations, Purchaser shall provide any wiring diagrams, manuals, special tools, monitoring devices, software, hardware or any other items designed to work with, diagnose, service, or repair the Unit(s) (1) as originally supplied by the OEM with the installation or (2) solely available to Purchaser from the OEM.

Some equipment covered by this Agreement may be encoded with serialized onboard diagnostics or other closely held diagnostic intelligence. In the event that the cause of a shutdown or other equipment issue cannot be diagnosed and/or resolved without enlisting the OEM's assistance, Purchaser agrees to obtain the assistance of the OEM and TK Elevator agrees to reimburse you for that expense, provided that it does not exceed the total monthly service fee divided by the number of Units covered under this Agreement. Any fees in excess of that figure shall be exclusively the Purchaser's responsibility.

Since TK Elevator's top priority is the satisfaction of its customers, if you should have any concern(s) with our performance or the means and methods used to meet our obligations under this Agreement, you agree to provide us with written notice of that concern and give us thirty (30) days to respond either in writing or commence action to appropriately resolve it. If you have satisfied those conditions and we do not respond in writing or commence action to appropriately resolve your concern within that thirty (30) day period you shall then have the right to terminate this Agreement after providing our local branch manager with an additional thirty (30) days written notice via certified mail, return receipt requested, recognizing that time is of the essence with respect to this provision.

In the event of the sale, lease or other transfer of the ownership of the premises in which the Unit(s) described herein are located, you agree to see that such transferee is made aware of this Agreement and agrees to assume and/or be bound by the conditions hereof for the balance of the unexpired term of this Agreement. Should the transferee fail to assume this Agreement, you shall remain liable for all unpaid amounts, including those owed for the balance of the current unexpired term of this Agreement.

Unless this Agreement expressly includes, or is later amended to include, TK Elevator Communications Phone Monitoring Service or Multimedia Monitoring Service as described in the exhibit hereto, this Agreement expressly excludes any materials, labor and/or services involving or related to either the monitoring of or provision of a response to any communications initiated from any Communication Equipment installed within the Unit(s) and Purchaser

Gold Service Agreement



remains solely responsible for contracting with a separate vendor to monitor and respond to such communications in accordance with all applicable codes, statutes and/or laws.

You expressly agree to release and discharge us and our employees for any and all claims and/or losses of any type or kind (including but not limited to personal injury, death and property damage, specifically including damage to the property which is the subject matter of this Agreement) (1) associated with any components excluded in this Agreement or (2) associated with any Billable Work or (3) caused in whole or in part by reason(s) outside of our control. TK Elevator shall also automatically receive an extension of time commensurate with any delay in performance caused by or related to the aforementioned.

TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, TK ELEVATOR EXPRESSLY DISCLAIMS ALL WARRANTIES, WHETHER EXPRESS, IMPLIED, STATUTORY OR OTHERWISE WITH RESPECT TO ANY OR ALL OF THE PARTS, PLATFORMS (INCLUDING BUT NOT LIMITED TO CP, APP AND MAX) AND/OR SERVICES CONTEMPLATED BY THIS AGREEMENT INCLUDING ALL IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE AND NON-INFRINGEMENT, AND WARRANTIES THAT MAY ARISE OUT OF COURSE OF DEALING, COURSE OF PERFORMANCE, USAGE OR TRADE PRACTICE. WITHOUT LIMITATION TO THE FOREGOING, TK ELEVATOR PROVIDES NO WARRANTY OR UNDERTAKING, AND MAKES NO REPRESENTATION OF ANY KIND THAT THE PARTS, PLATFORMS AND/OR SERVICES CONTEMPLATED BY THIS AGREEMENT WILL BE ACCESSIBLE TO CUSTOMER, ACHIEVES ANY INTENDED RESULTS, MEETS CUSTOMER'S REQUIREMENTS, OPERATES WITHOUT INTERRUPTION, MEETS ANY PERFORMANCE OR RELIABILITY STANDARDS OR BE ERROR FREE OR THAT ANY ERRORS OR DEFECTS CAN OR WILL BE CORRECTED. TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, IN NO EVENT WILL TK ELEVATOR OR ITS AFFILIATES, BE LIABLE TO THE CUSTOMER OR ANY THIRD PARTY FOR ANY USE, INTERRUPTION, DELAY OR INABILITY TO USE THE UNIT(S), PARTS, PLATFORMS AND/OR SERVICES OR FOR THE ACT OF ANY THIRD PARTY RELATED THERETO, INCLUDING BUT NOT LIMITED TO THE INCORPORATION OF A VIRUS, SPYWARE OR ANY OTHER MALICIOUS PROGRAM INTO THE PURCHASER'S SOFTWARE OR HARDWARE OR PLATFORM.

In consideration of TK Elevator performing the services herein specified, you expressly agree, to the fullest extent permitted by law, to indemnify, defend, save harmless, discharge, release and forever acquit TK Elevator Corporation, our employees, officers, agents, affiliates, and subsidiaries from and against any and all claims, demands, suits, and proceedings brought against TK Elevator, our employees, officers, agents, affiliates and subsidiaries for loss, property damage (including damage to the Unit(s) which are the subject matter of this Agreement), personal injury or death that are alleged to have been caused by the Purchaser or any others in connection with the presence, use, misuse, maintenance, installation, removal, manufacture, design, operation or condition of the Unit(s) covered by this Agreement, or the associated areas surrounding such equipment. Your duty to indemnify does not apply to the extent that the loss, property damage (including damage to the equipment which is the subject matter of this Agreement), personal injury or death is determined to be caused by or resulting from the negligence of TK Elevator and/or our employees. You recognize that your duty to defend TK Elevator under this clause is broader than your duty to indemnify and includes payment of all attorney's fees, court costs, judgments, settlements, interest and any other expenses of litigation arising out of such claims or lawsuits.

You expressly agree to name TK Elevator Corporation along with its officers, agents, affiliates and subsidiaries as additional insureds in your liability and any excess (umbrella) liability insurance policy(ies). Such insurance must insure TK Elevator Corporation, along with its officers, agents, affiliates and subsidiaries for those claims and/or losses referenced in the above paragraph, and for claims and/or or losses arising from the sole negligence or responsibility of TK Elevator Corporation and/or its officers, agents, affiliates and subsidiaries. Such insurance must specify that its coverage is primary and non-contributory. You hereby waive the right of subrogation.

In no event shall TK Elevator's liability for damages arising out of this Agreement exceed the remaining unpaid installments of the current, unexpired term of this Agreement.

You expressly agree to release and discharge TK Elevator from any and all claims for consequential, special or indirect damages arising out of the performance of this Agreement.

Gold Service Agreement



In the event an attorney is retained to enforce, construe or defend any of the terms and conditions of this Agreement or to collect any monies due hereunder the prevailing Party shall be entitled to recover all costs and reasonable attorney's fees.

You hereby waive trial by jury. You agree that this Agreement shall be construed and enforced in accordance with the laws of the state where the Unit(s) is/are located. You consent to jurisdiction of the courts, both state and Federal, of the state in which the Unit(s) is/are located as to all matters and disputes arising out of this Agreement.

In the event any portion of this Agreement is deemed invalid or unenforceable by a court of law, public policy or statute, such finding shall not affect the validity or enforceability of any other portion of this Agreement.

Our rights under this Agreement shall be cumulative and our failure to exercise any rights given hereunder shall not operate to forfeit or waive any of said rights and any extension, indulgence or change by us in the method, mode or manner of payment or any of its other rights shall not be construed as a waiver of any of its rights under this Agreement.

In the event that Purchaser and TK Elevator are parties to an existing elevator maintenance agreement at the time this proposed agreement is submitted for consideration, the existing agreement will remain in full force and effect until such time as this proposed agreement is accepted and fully executed in writing by both Parties. Upon full acceptance by both Parties, this proposed Agreement shall supersede all prior agreements.

Special Considerations

Gold Agreement

Service Agreement will include 4 Visits per year which includes Preventative Maintenance and One annual safety visit per year.

Hourly Price for requested service repairs

- Included for requested service repairs during normal business hours 8:00AM-4:30PM
- \$510 Per Hour for requested service repairs After 4:30PM and Saturday.
- \$600 Per Hour for requested service repairs outside normal business hours for Sunday and all Holidays.
- \$400 Per Hour for any service during normal business hours 8:00am-4:30PM that fall outside of service agreement.
- Locked 2 years, Each year after 5% PI Capp

Gold Service Agreement



Acceptance

Until executed by both Parties this Agreement is a proposal that shall only remain available for acceptance for a period of sixty (60) calendar days from the date appearing on the first page of this document unless revoked by TK Elevator earlier in writing to Purchaser. Your acceptance of this Agreement and its approval by an authorized manager of TK Elevator will constitute exclusively and entirely the agreement for the services herein described. All other prior representations or agreements, whether written or verbal, will be deemed to be merged herein and no other changes in or additions to this Agreement will be recognized unless made in writing and properly executed by both Parties. Should your acceptance be in the form of a purchase order or other similar document, the provisions of this Agreement will exclusively govern the Parties' responsibilities. No agent or employee of TK Elevator shall have the authority to waive or modify any of the terms of this Agreement without the express prior written approval of an authorized TK Elevator manager.

Nixa Community Ctr (Purchaser):	TK Elevator Corporation Management Approval
By: _____	By: _____
(Signature of Authorized Individual) Matt Crouse	(Signature of Branch Representative)
_____ (Print or Type Name)	Wayne Robinson Branch Manager
_____ (Print or Type Title)	
_____ (Date of Acceptance)	_____ (Date of Execution)

For inquiries regarding your contract or services provided by TK Elevator, please contact your local branch office:

5247 N 23rd St
Ozark, MO 65721
417-581-9466

Thank you for choosing TK Elevator. We appreciate your business.

Dustin French

Gold Service Agreement



Exhibit A

Equipment to be Maintained

Building Name	Address	Equipment Type	Nickname	Legal ID	OEM Serial #	Stops
Nixa Community Center	701 N Taylor Way	Hydraulic	LOBBY 1	11249	EM9232	2
City Of Nixa	715 W Mount Vernon St	Residential / Chairlift	LIFT	5027	0907WLS B14421797 37LW	2

Gold Service Agreement



Exhibit B

MAX

MAX is TK Elevator’s smart, machine learning Internet of Things (“IoT”) solution that has the ability to increase elevator availability and reduce out-of-service situations through real-time diagnostics. Connected 24/7/365, machine data covering topics such as door movements, trips, power-ups, car calls, and error codes is collected from MAX-connected elevators worldwide and is sent to the cloud. From there, depending on the menu of services you select below (a “Digital Service Package”), unique algorithms that are capable of analyzing that data and recognizing patterns to assist in computing the equipment’s operation and providing precise and predictive diagnostics can be delivered to the technician in near real time, indicating where intervention is needed. The Digital Service Package you select will be governed by both the terms and conditions of the Agreement covering the Units described below and this MAX Exhibit and in the event that those terms conflict, the terms and conditions of this MAX Exhibit will exclusively govern the subject matter of those terms and conditions.

With MAX, we are able to offer the following Digital Service Packages with value-added features (“features”) to your Agreement:

The (CHECK MARKS) below indicate which features are available in each of the individual Digital Service Packages.

	MAX Plus	MAX Pro	MAX Premium
IoT Connected with MAX Virtual Coach MAX device connected to Tk Elevator’s IoT-based cloud enabling near real-time status and communication. Information obtained via machine learning is sent to our technician’s mobile device with the service request to promote early diagnosis, faster fixes and reduced downtime.	✓	✓	✓
Email Notifications Stay informed of recent services provided via entries generated by our technicians available for your review in our customer web-based portal.	✓	✓	✓
Web Portal & Mobile App Secure access to your account including basic unit information and historical service information via web and native Android & iOS Apps.	✓	✓	✓
MAX Traffic Statistics Make smarter, data-driven decisions about your building by analyzing how elevator traffic changes over time in our customer web-based portal	✓	✓	✓
Real-Time Status and Failure Alerts Near real-time push notifications available via a mobile App or e-mail when a MAX-enabled unit shuts down and is returned to service.	✓	✓	✓
Auto Response / Dispatching As soon as our MAX technology verifies a failure we will immediately respond during Regular Time or seek your authorization to respond during Overtime to get your equipment back up and running.		✓	✓

Gold Service Agreement



	MAX Plus	MAX Pro	MAX Premium
No Charge Running on Arrival ("ROA") Guarantee Since we are monitoring your elevator's operation, we will not bill you if our technician is dispatched on regular time and finds the unit ROA or is on independent service, firefighters' service, or is the subject of an engaged stop button/feature.		✓	✓
Social Distancing Service When changes are made to the Controller Software or Destination Dispatching program to promote social distancing, our MAX Premium Team will monitor the traffic patterns in the building for increased demand and communicate this information back to you.		✓	✓
MAX Team Monitoring The MAX Premium team of experts will perform a regular review of the traffic and service history, predictive analytics and other relevant data and insights to promote optimum uptime and recommendations to keep your building moving most efficiently.			✓
Predictive Intervention If during its review of traffic and service history, predictive analytics and other relevant data our MAX Premium team of experts recognizes what it believes to be a certain upcoming failure on a unit we will pre-emptively dispatch a technician to investigate and address the issue. These preventative actions taken before your elevator fails will increase your equipment's uptime and reduce inconvenience.			✓
Subscription Price per unit per month	\$10	\$35	\$95

Price, Term and Your Digital Service Package

We have included the following Digital Service Package notated below for the selected units below for an additional price of **\$10 per month which will be billed to you separately from the price of the Agreement (the "MAX Charge")**. The cost of your selected Digital Service Package is not subject to any discounts. Due to the changing nature of technology, TK Elevator reserves the right to increase the MAX Charge not to exceed a total of five percent (5%) annually. In addition to the monthly amount, the Digital Service Package selected below also requires a one-time activation and setup fee of \$249.00 per building.

The Digital Service Package noted below will be provided to you on a month-to-month basis and may be substituted for another package or cancelled at any time with thirty (30) days prior written notice by either Party to the other.

Building Name	Equipment Type	Nickname	Stops	MAX Plus	MAX Pro	MAX Premium
Nixa Community Center	Hydraulic	LOBBY 1	2	Current Selection		

Unless otherwise provided for in the Agreement, any Service Requests, repairs, or maintenance initiated by the Digital Service Package shall be performed during Regular Time.

As technology changes or enhancements to our Digital Service Packages become available, TK Elevator may, in its sole discretion, change any aspect of any feature on thirty (30) days written notice to Purchaser. Such changes can include, but would not be limited to, modifying, adding or eliminating content, access to information and/or reports, application support, operating system support and other aspects that TK Elevator may deem appropriate in its sole opinion.

Gold Service Agreement



Exhibit C

TK Elevator Communications

TK Elevator offers an additional suite of services through our TK Elevator Communications call center separate and apart from those services included with your Agreement. We have notated below each additional TK Elevator Communications Service that you have selected for each of the Units covered under your Agreement and the corresponding total price of those services per Unit.

Building Name	Equipment Type	Nickname	Phone Monitoring	Elevator Telephone #
Nixa Community Center	Hydraulic	LOBBY 1	Current Selection	
City Of Nixa	Residential / Chairlift	LIFT	Current Selection	

A description of each available TK Elevator Communications service and the additional applicable terms and conditions follow.

Phone Monitoring Service

If “Phone Monitoring” is selected for specific Units in the chart above then we will provide 7 days per week, 24 hours per day, 365 days per year dispatching service, through its centralized TK Elevator Communications call center, for those specified units. The dispatching service will be provided for calls placed by Purchaser outside of Regular Time to the local TK Elevator branch office. We will also include telephone monitoring on all Units maintained under this Agreement that have operational telephone equipment capable of placing a call to that call center. Depending on the nature of the call and circumstances, TK Elevator’s operators can call one or more of the following: Purchaser’s Designated Contacts set forth below; Local Emergency Services at phone numbers provided by Purchaser below; and/or a local TK Elevator service technician to be dispatched to the location of the equipment. Calls cannot be placed to “9-1-1” as the centralized TK Elevator Communications call center does not have dialing access to local “9-1-1” numbers.

This Phone Monitoring Service specifically excludes any maintenance, repair or replacement of any type or kind of the Purchaser’s telephone or other communication equipment. The Purchaser retains exclusive possession and control of its telephone and other communication equipment and is solely responsible for ensuring uninterrupted operation of that equipment so that it is continuously capable of placing a call to TK Elevator Communication’s call center.

Terms and Conditions

Any of the services mentioned in this Exhibit shall be governed by both the terms and conditions of the Agreement covering the Unit(s) described in that Agreement and the terms and conditions of this Exhibit and in the event that those terms conflict, the terms and conditions of this Exhibit will exclusively govern the subject matter of those terms and conditions. Should the Agreement covering the Unit(s) be terminated for any reason by either Party then this Exhibit shall also be automatically terminated. In the event that this Exhibit is terminated for whatever reason, Purchaser agrees to immediately both transfer the connection of the communication equipment to an appropriate telephone service provider and also make arrangements with its replacement elevator service vendor to reprogram the communication equipment to initiate contact with a replacement call center.

Price and Term

In light of the modifications to Agreement set forth above, you agree to an additional price of \$0 per month which will be billed to you separately from the price of the Agreement (the “TK Elevator Communications Services Charge”). The cost of your selected TK Elevator Communications Services is not subject to any discounts. Due to the changing nature of technology, TK Elevator reserves the right to annually increase the TK Elevator Communications Services Charge with such an annual increase not to exceed a total of five percent (5%) of the prior year’s TK Elevator Communications Services Charge.

Gold Service Agreement



TK Elevator Communications Contact Information - To Be Completed by Purchaser

Purchaser hereby acknowledges that as a condition precedent to TK Elevator's placement of calls to Purchaser's Designated Contacts and any Local Emergency Services under this Agreement, Purchaser must first complete all sections of the TK Elevator communications Contact Information section below. Purchaser further acknowledges that it is Purchaser's sole responsibility to advise TK Elevator immediately in writing of any changes to the information contained in this exhibit during the term of this Agreement. Purchaser acknowledges that no revision to that information will be made without TK Elevator first receiving such request in writing from Purchaser's authorized representative.

Under those circumstances where TK Elevator is unable to reach Purchaser's Designated Contacts, Purchaser hereby gives TK Elevator express permission to dispatch a TK Elevator service technician to the location of the equipment at Purchaser's expense in accordance with TK Elevator's applicable billing rates. Purchaser further agrees that TK Elevator does not assume any duty or responsibility to advise any caller, regardless of his or her location within or outside the elevator, to take or not take any specific action resulting from a medical or other emergency or any other situation including, but not limited to, entrapment of persons, evacuation, repair or return to service of any equipment.

In the event of an emergency, or perceived emergency, one or more of the following are to be Purchaser's Designated Contacts:

Contact Name	Title	Primary Telephone #	Secondary Telephone #

In the event of an Emergency or perceived emergency, TK Elevator has the express permission to contact one or more of the following (**911 is not sufficient, local phone numbers are required**):

Police Department: (_____) _____ - _____

Fire Department: (_____) _____ - _____

Special instructions/remarks:

In the event that a TK Elevator call center operator perceives that a call from within the elevator constitutes a medical or other emergency, Purchaser hereby gives TK Elevator the express permission to call Local Emergency Services at the telephone numbers provided above at TK Elevator's sole discretion. Under those circumstances, Purchaser agrees to pay all related charges for services provided by any Local Emergency Services in response to that call. Purchaser agrees that TK Elevator shall not be responsible for ensuring an appropriate (or any) response by Local Emergency Services to that call.



Customer Portal & Mobile App setup form

Name:	Matt Crouse		
Address: (if different from contract)			
City:			
State:			
Zip Code:			
Phone:			
Email:	mcrouse@nixa.com		
Subscribe to email notifications:	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>