

**WASCO COUNTY  
PROFESSIONAL SERVICES  
AGREEMENT  
TK Elevator Corporation**

THIS AGREEMENT is between Wasco County, an Oregon political subdivision (“County”), and TKE Elevator Corporation (“Contractor”). This Agreement shall be effective when signed by both parties.

**RECITALS**

- A. Contractor has the training, ability, knowledge, and experience to provide Services desired by the County.
- B. County selected Contractor to provide Services pursuant to a solicitation process consistent with its public contracting rules.
- C. The Services described below are to be provided by the Contractor.

**AGREEMENT**

**1. Services to be Provided**

Contractor shall provide County with services as outlined in Addendum A, Addendum B and as requested by County for servicing and maintaining the equipment and elevator located at 309 E 2<sup>nd</sup> Street, The Dalles, Oregon, 97058 (the “Services”).

**2. Term**

The term of this Agreement is effective November 1, 2023, and shall remain in effect for twelve months with the option of additional one (1) year renewals if agreed to by both parties.

**3. Compensation**

- a. Services are billed monthly at the rate of \$237.17 per month, based on the TKE price rate.
- b. Under no circumstance shall Contractor shall bill County for more than the Maximum Fee (and County shall have no obligation to pay more than the Maximum Fee) of **\$ 2846.04**

**4. Assignment/Delegation**

Neither party shall assign or transfer any interest in or duty under this Agreement without the written consent of the other.

**5. Status of Contractor as Independent Contractor**

Contractor certifies that:

- a. Contractor acknowledges that Contractor is an independent contractor as defined by ORS 670.600 and not an employee of County, shall not be entitled to benefits of any kind to which an employee of County is entitled and shall be solely responsible for all payments and taxes required by law. Furthermore, in the event that Contractor is found by a court of law or any administrative agency to be an employee of County for any purpose, County shall be entitled to offset compensation due, or to demand repayment of any amounts paid to Contractor under the terms of this Agreement, to the full extent of any benefits or other remuneration Contractor receives (from County or third party) as a result of the finding and to the full extent of any payments that County is required to make (to Contractor or to a third party) as a result of the finding.
- b. Contractor represents that no employee of the County, or any partnership or corporation in which a County employee has an interest, has or will receive any remuneration of any description from Contractor, either directly or indirectly, in connection with this Agreement, except as specifically declared in writing.
- c. Contractor is not an officer, employee, or agent of the County as those terms are used in ORS 30.265.

## **6. Indemnification**

- a. CLAIMS FOR OTHER THAN PROFESSIONAL LIABILITY. CONTRACTOR SHALL INDEMNIFY, DEFEND, SAVE, AND HOLD HARMLESS COUNTY AND ITS OFFICERS, AGENTS, AND EMPLOYEES, FROM AND AGAINST ALL CLAIMS, SUITS, ACTIONS, LOSSES, DAMAGES, LIABILITIES, COSTS AND EXPENSES OF WHATSOEVER NATURE RESULTING FROM OR ARISING OUT OF THE ACTS OR OMISSIONS OF CONTRACTOR OR ITS SUB-CONTRACTORS, SUBCONTRACTORS, AGENTS, OR EMPLOYEES UNDER THIS CONTRACT. NOTWITHSTANDING ANYTHING TO THE CONTRARY, CONTRACTOR'S OBLIGATIONS TO INDEMNIFY, DEFEND AND HOLD HARMLESS SHALL BE LIMITED TO PROPERTY DAMAGE AND BODILY INJURY CLAIMS ONLY, AND THEN, ONLY TO THE EXTENT OF CONTRACTOR'S OWN ACTS, OMISSIONS, OR NEGLIGENCE, AND SHALL IN NO WAY INCLUDE FOR THE ACTS, OMISSIONS, OR NEGLIGENCE OF A PARTY INDEMNIFIED HEREUNDER. IT IS FURTHER AGREED THAT IN NO EVENT SHALL EITHER PARTY BE LIABLE TO THE OTHER PARTY FOR ANY CONSEQUENTIAL, INCIDENTAL, EXEMPLARY, SPECIAL AND/OR LIQUIDATED DAMAGES.
- b. CLAIMS FOR PROFESSIONAL LIABILITY. CONTRACTOR SHALL INDEMNIFY, DEFEND, SAVE, AND HOLD HARMLESS COUNTY AND ITS OFFICERS, AGENTS, AND EMPLOYEES, FROM AND AGAINST ALL CLAIMS, SUITS, ACTIONS, LOSSES, DAMAGES, LIABILITIES, COSTS AND EXPENSES OF WHATSOEVER NATURE ARISING OUT OF THE PROFESSIONALLY NEGLIGENT ACTS, ERRORS OR OMISSIONS OF CONTRACTOR OR ITS SUB CONTRACTORS, SUBCONTRACTORS, AGENTS, OR EMPLOYEES IN THE

## PERFORMANCE OF PROFESSIONAL SERVICES UNDER THIS CONTRACT.

### 7. Insurance

Contractor shall not commence any work until Contractor obtains, at Contractor's own expense, all required insurance as specified in attached **Addendum C**. The procuring of required insurance shall not be construed to limit Contractor's liability under this Agreement. Notwithstanding said insurance, Contractor shall be obligated for the total amount of any damage, injury, or loss caused by negligence or neglect connected with this Agreement.

### 8. Method and Place of Submitting Notice, Bills and Payments

All notices, bills and payments shall be made in writing and may be given by personal delivery or mail. Payments may be made by personal delivery, mail, or electronic transfer. The following addresses shall be used to transmit notices and other information:

**County:**

Administrative Officer  
511 Washington St  
The Dalles, OR 97058

**Contractor:**

TK Elevator Corporation  
14626 NE Airport Way  
Portland, Oregon 97230

Notices mailed to the address provided for notice in this section shall be deemed given upon deposit in the United States mail, postage prepaid. In all other instances, notices, bills and payments shall be deemed given at the time of actual delivery.

### 9. Merger

This writing is the final expression of the agreement between the parties with respect to the included terms and as a complete and exclusive statement of the terms of the agreement. No modification of this Agreement shall be effective unless and until it is made in writing and signed by both parties.

### 10. Ownership of Work Documents

All work performed by Contractor and compensated by County pursuant to this Agreement shall be the property of County upon full compensation for that work performed or document produced to Contractor, and it is agreed by the parties that such documents are works made for hire. Contractor hereby conveys, transfers and grants to County all rights of reproduction and the copyright to all such documents.

### 11. Labor and Material

Contractor shall provide and pay for all labor, materials, equipment, tools, transportation, and other facilities and Services necessary for the proper execution and completion of all contract work, all at

no cost to County other than the compensation provided in this Agreement.

## **12. Termination for Convenience**

This Agreement may be terminated by either party for convenience by giving thirty (30) days' prior written notice of intent to terminate, without waiving any claims or remedies it may have against the other. Upon termination under this paragraph, Contractor shall be entitled to payment in accordance with the terms of this Agreement for contract work completed and accepted before termination less previous amounts paid and any claim(s) County has against Contractor. Pursuant to this paragraph, Contractor shall submit an itemized invoice for all unreimbursed contract work completed before termination and all contract closeout costs actually incurred by Contractor. County shall not be liable for any costs invoiced later than thirty (30) days after termination unless Contractor can show good cause beyond its control for the delay.

## **13. Termination for Cause**

County may terminate this Agreement upon delivery of seven (7) days' written notice to Contractor, or at such later date as may be established by County, under any of the following conditions:

- A. If County funding is not obtained and continued at levels sufficient to allow for purchases of the indicated quantity of Services. This Agreement may be modified to accommodate a reduction in funds.
- B. If federal or state regulations or guidelines are modified, changed, or interpreted in such a way that the Services are no longer allowable or appropriate for purchase under this Agreement or are no longer eligible for the funding proposed for payments authorized by this Agreement.
- C. If any license or certificate required by law or regulation to be held by Contractor to provide the Services required by this Agreement is for any reason denied, revoked, or not renewed.

## **14. Termination for Default**

Either County or Contractor may terminate this Agreement in the event of a breach of this Agreement by the other. Prior to such termination, the party seeking termination shall give to the other party written notice of the breach and intent to terminate. If the party committing the breach has not entirely cured the breach within fifteen (15) days of the date of the notice, then the party giving the notice may terminate this Agreement at any time thereafter by giving a written notice of termination.

If Contractor fails to perform in the manner called for in this Agreement or if Contractor fails to comply with any other provisions of this Agreement, County may terminate this Agreement for default. Termination shall be effected by serving a notice of termination on Contractor setting forth the manner in which Contractor is in default. Contractor shall be paid the contract price only for Services performed in accordance with the manner of performance as set forth in this Agreement.

## **15. Remedies**

In the event of breach of this Agreement the parties shall have the following remedies:

- A. If terminated under paragraph 14 by County due to a breach by Contractor, County may complete the work either itself, by agreement with another contractor, or by a combination thereof.
- B. In addition to the above remedies for a breach by Contractor, County also shall be entitled to any other equitable and legal remedies that are available.
- C. If County breaches this Agreement, Contractor's remedy shall be limited to termination of this Agreement and receipt of contract payments to which Contractor is entitled.
- D. Neither Party shall be liable for any indirect, incidental, consequential, or special damages under this Agreement or any damages arising solely from terminating this Agreement in accordance with its terms.
- E. Upon receiving a notice of termination, and except as otherwise directed in writing by County, Contractor shall immediately cease all activities related to the Services and work under this Agreement. As directed by County, Contractor shall, upon termination, deliver to County all then existing work product that, if this Agreement had been completed, would be required to be delivered to County.

#### **16. Nondiscrimination**

During the term of this Agreement, Contractor shall not discriminate against any employee or applicant for employment because of race, religion, color, sex, age, or national origin.

#### **17. Governing Law; Jurisdiction; Venue**

This Agreement shall be governed by and construed in accordance with the laws of the state of Oregon without regard to principles of conflicts of law. Any claim, action, suit or proceeding (collectively "Claim") between County and Contractor that arises from or relates to this Agreement which results in litigation shall be brought within the Circuit Court of Wasco for the state of Oregon; provided, however, if a Claim must be brought in a federal forum, then it shall be brought and conducted solely and exclusively within the United States Court for the State of Oregon.

#### **18. Compliance with Laws and Regulations**

Contractor shall comply with all state and local laws, regulations, executive orders and ordinances applicable to this Agreement or to the delivery of Services hereunder.

#### **19. Experience, Capabilities and Resources**

By execution of this Agreement, the Contractor agrees that Contractor has the skill, legal capacity, and professional ability necessary to perform all the Services required under this Agreement, and Contractor has the capabilities and resources necessary to perform the obligations of this Agreement.

## **20. Access to Records**

For not less than three (3) years after the expiration of this Agreement and for the purpose of making audit, examination, excerpts, and transcripts, County, and its duly authorized representatives shall have access to Contractor's books, documents, papers, and records that are pertinent to this Agreement. If, for any reason, any part of this Agreement, or any resulting construction contract(s) is involved in litigation, Contractor shall retain all pertinent records for not less than three years or until all litigation is resolved, whichever is longer. Contractor shall provide full access to these records to County, and its duly authorized representatives in preparation for and during litigation.

## **21. Representations and Warranties**

Contractor represents and warrants to County that (1) Contractor has the power and authority to enter into and perform this Agreement, (2) when executed and delivered, this Agreement shall be a valid and binding obligation of Contractor enforceable in accordance with its terms, (3) Contractor shall, at all times during the term of this Agreement, be duly licensed to perform the Services, and if there is no licensing requirement for the profession or Services, be duly qualified and competent, (4) the Services under this Agreement shall be performed in accordance with the professional skill, care and standards of other professionals performing similar services under similar conditions, and (5) the Contractor is not in violation of any Oregon tax laws. The warranties set forth in this section are in addition to, and not in lieu of, any other warranties provided.

## **22. Attorney Fees**

In case a suit or action is instituted to enforce the provisions of this Agreement, the parties agree that the losing party shall pay such sums as the court may adjudge reasonable for attorney fees and court costs, including attorney fees and costs on appeal.

## **23. Confidentiality**

Contractor shall maintain the confidentiality of any of County's information that has been so marked as confidential, unless withholding such information would violate the law, create the risk of significant harm to the public or prevent Contractor from establishing a claim or defense in an adjudicatory proceeding. Contractor shall require similar agreements from County's and/or Contractor's subcontractors to maintain the confidentiality of information of County.

## **24. Force Majeure**

Contractor shall not be deemed in default hereof nor liable for damages arising from its failure to perform its duties or obligations hereunder if such is due to causes beyond its reasonable control, including, but not limited to, acts of God, acts of civil or military authorities, fires, floods, windstorms, pandemic, earthquakes, strikes or other labor disturbances, civil commotion or war.

## **25. Waivers**

No waiver by County of any provision of this Agreement shall be deemed to be a waiver of any

other provision hereof or of any subsequent breach by Contractor of the same or any other provision. County's consent to or approval of any act by Contractor requiring County's consent or approval shall not be deemed to render unnecessary the obtaining of County's consent to or approval of any subsequent act by Contractor, whether or not similar to the act so consented to.

## **26. Severability**

Any provisions of this Agreement which shall prove to be invalid, void or illegal shall in no way affect, impair or invalidate any other provision hereof, and such remaining provisions shall remain in full force and effect.

## **27. Headings**

The captions contained in this Agreement are for convenience only and shall not be considered in the construction or interpretation of any provision hereof.

## **28. Integration**

This Agreement, including the attached exhibits contains the entire agreement between the parties regarding the matters referenced herein and supersedes all prior written or oral discussions or agreements regarding the matters addressed by this Agreement.

## **29. Amendments**

This Agreement shall not be waived, altered, modified, supplemented, or amended in any manner without a duly executed Amendment.

## **30. Authority**

The representatives signing on behalf of the parties certify that they are duly authorized by the party for which they sign to make this Agreement.

TK Elevator Corporation

Wasco County

By: Noah Lester  
Name: Noah Lester  
Title: Contract Analyst

By: Tyler Stone  
Name: Tyler Stone  
Title: Administrative Officer

**Addendum “A” – SERVICES**  
to  
**WASCO COUNTY PERSONAL SERVICES AGREEMENT**

**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 reasonable opinion, necessitated by normal wear and tear or is not otherwise excluded by this Agreement (“Service Visits”). These Service Visits will be performed promptly 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 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.

**Testing**

Equipment Testing

This agreement includes only the following tests:

- those annual safety tests for your hydraulic 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 except for damage that is the result of TK Elevators negligence.

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.

#### 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 **Addendum B** 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.

**Addendum “B” - TK ELEVATOR COMMUNICATIONS**  
**to**  
**WASCO COUNTY PERSONAL SERVICES AGREEMENT**

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 #
Wasco County	Hydraulic		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.

### 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 #
Ali Postlewait	Director of Administrative Services	541-506-2553	541-993-5193
Robert Hughes	Facilities Manager	541-506-2548	541-993-7228
Wayne Conners	Facilities Tech II	541-980-1175	

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:

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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

	Ali Postlewait	Andrew Burke	
Address: (if different from contract)	511 Washington Street *Address will eventually be the same as contract	511 Washington Street *Address will eventually be the same as contract	
City:	The Dalles	The Dalles	
State:	Oregon	Oregon	
Zip Code:	97058	97058	
Phone:	+1 541 506 2553	1 541 506 2537	
Email:	alip@co.wasco.or.us	Andrewb@co.wasco.or.us	
Subscribe to email notifications:	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>