

**EXHIBIT**

**"A"**

**CITY OF ROUND ROCK AGREEMENT FOR  
PURCHASE AND INSTALLATION OF AN ELEVATOR  
FOR THE CITY HALL PARKING GARAGE  
WITH  
CENTRAL TEXAS ELEVATOR, LLC**

<b>THE STATE OF TEXAS</b>	§	
	§	
<b>CITY OF ROUND ROCK</b>	§	<b>KNOW ALL BY THESE PRESENTS:</b>
	§	
<b>COUNTY OF WILLIAMSON</b>	§	
<b>COUNTY OF TRAVIS</b>	§	

THAT THIS AGREEMENT for purchase and installation of an elevator for the City Hall public parking garage, and for related goods and services (referred to herein as the "Agreement"), is made and entered into on this the \_\_\_\_\_ day of the month of \_\_\_\_\_, 2020 by and between the CITY OF ROUND ROCK, a Texas home-rule municipality, whose offices are located at 221 East Main Street, Round Rock, Texas 78664-5299 (referred to herein as the "City"), and CENTRAL TEXAS ELEVATOR, LLC, whose offices are located at 123 Bob's Trail, Bastrop, Texas 78602 (referred to herein as the "Services Provider").

**RECITALS:**

WHEREAS, City desires to purchase certain deliverables and services, specifically removal of the existing elevator and installation of a new elevator at the City Hall public parking garage, and City desires to procure same from Services Provider; and

WHEREAS, Sections 252.022(a)(2) and 252.022(3) of the Local Government Code allows exemptions to competitive bidding requirements for: 1) procurements that are necessary to preserve the health and safety of the City's residents; and 2) procurements necessary because of unforeseen damage to public machinery, equipment or other property; and

WHEREAS, an unforeseen power outage caused such extensive damage to the City Hall public parking garage elevator that it requires replacement; and

WHEREAS, the City has the obligation to protect the health, safety and welfare of its residents by promptly procuring a new elevator for the City Hall parking garage to ensure that the parking garage is ADA accessible to residents; and

WHEREAS, the procurement for the removal of the existing damaged elevator and installation of a new elevator is, therefore, exempt from competitive bidding requirements pursuant to Sections 252.022(a)(2) and 252.022(3) of the Local Government Code; and

WHEREAS, the parties desire to enter into this Agreement to set forth in writing their respective rights, duties, and obligations;

NOW, THEREFORE, WITNESSETH:

That for and in consideration of the mutual promises contained herein and other good and valuable consideration, the sufficiency and receipt of which are hereby acknowledged, it is mutually agreed between the parties as follows:

### 1.01 DEFINITIONS

A. **Agreement** means the binding legal contract between City and Services Provider whereby City agrees to buy specified goods and services and Services Provider is obligated to sell and provide same. The Agreement includes Service's Provider Proposal dated May 7, 2020, attached as Exhibit "A," and incorporated herein for all purposes.

B. **City** means the City of Round Rock, Williamson and Travis Counties, Texas.

C. **Effective Date** means the date upon which the binding signatures of both parties to this Agreement are affixed.

D. **Force Majeure** means acts of God, strikes, lockouts, or other industrial disturbances, acts of the public enemy, orders of any kind from the government of the United States or the State of Texas or any civil or military authority, insurrections, riots, epidemics, landslides, lightning, earthquakes, fires, hurricanes, storms, floods, restraint of the government and the people, civil disturbances, explosions, or other causes not reasonably within the control of the party claiming such inability.

E. **Goods and services** mean the specified services, supplies, materials, commodities, or equipment.

F. **Services Provider** means Central Texas Elevator, LLC, its successor or assigns.

### 2.01 EFFECTIVE DATE, TERM

A. This Agreement shall be effective on the date this Agreement has been signed by each party hereto, and shall remain in full force and effect unless and until it expires by operation of the term indicated herein, or is terminated or extended as provided herein.

B. This Agreement shall terminate upon completion of the services as described herein and in Exhibit "A."

C. City reserves the right to review the relationship at any time, and may elect to terminate this Agreement with or without cause or may elect to continue.

### 3.01 CONTRACT DOCUMENTS AND EXHIBITS

The goods and services which are the subject matter of this Agreement are described in Exhibit "A" and, together with this Agreement, comprise the Contract Documents. Any

inconsistencies or conflicts in the contract documents shall be resolved by giving preference to pages one (1) through eight (8) of this Agreement.

#### **4.01 SCOPE OF WORK**

Services Provider shall satisfactorily provide all goods and complete all services described in Service Provider's Proposal, Exhibit "A," attached hereto and incorporated herein.

This Agreement shall evidence the entire understanding and agreement between the parties and shall supersede any prior proposals, correspondence or discussions.

Services Provider shall satisfactorily provide all deliverables and services described in Exhibit "A" within the contract term specified. A change in the Scope of Services must be negotiated and agreed to in all relevant details, and must be embodied in a valid Supplemental Agreement as described herein.

#### **5.01 COSTS**

In consideration for the deliverables and services related to the deliverables, the City agrees to pay Services Provider **One Hundred Nineteen Thousand Eight Hundred Sixty-Two and No/100 Dollars (\$119,862.00)** as set forth in Section 6.01 below.

#### **6.01 PAYMENTS**

Owner shall make payments to Services Provider as follows:

A. Upon successful delivery of parts and materials to City property and receipt of an Application for Payment from Services Provider, the City shall pay Services Provider **fifty percent (50%)** of the total costs set forth in Section 5.01 above.

B. Upon successful completion of the project and receipt of an Application for Payment from the Services Provider, the City agrees to pay Services Provider the remaining **fifty percent (50%)** of the total costs set forth in Section 5.01 above.

#### **7.01 INSURANCE**

Services Provider shall meet all insurance requirements set forth on the City's website at: [https://www.roundrocktexas.gov/wp-content/uploads/2014/12/corr\\_insurance\\_07.20112.pdf](https://www.roundrocktexas.gov/wp-content/uploads/2014/12/corr_insurance_07.20112.pdf)

#### **8.01 TAXES**

City is exempt from Federal Excise and State Sales Tax; therefore, tax shall not be included in Services Provider's charges.

## **9.01 CITY’S REPRESENTATIVES**

City hereby designates the following representatives authorized to act in its behalf with regard to this Agreement:

Chad McDowell  
Director of General Services  
212 Commerce Cove  
Round Rock, Texas 78665  
512-341-3191  
[cmcdowell@roundrocktexas.gov](mailto:cmcdowell@roundrocktexas.gov)

## **10.01 RIGHT TO ASSURANCE**

Whenever either party to this Agreement, in good faith, has reason to question the other party’s intent to perform hereunder, then demand may be made to the other party for written assurance of the intent to perform. In the event that no written assurance is given within the reasonable time specified when demand is made, then and in that event the demanding party may treat such failure as an anticipatory repudiation of this Agreement.

## **11.01 DEFAULT**

If Services Provider abandons or defaults under this Agreement and is a cause of City purchasing the specified goods elsewhere, Services Provider agrees that it may be charged the difference in cost, if any, and that it may not be considered in future bids for the same type of work unless the scope of work is significantly changed.

Services Provider shall be declared in default of this Agreement if it does any of the following:

- A. Fails to fully, timely and faithfully perform any of its material obligations under this Agreement;
- B. Fails to provide adequate assurance of performance under the “Right to Assurance” section herein; or
- C. Becomes insolvent or seeks relief under the bankruptcy laws of the United States.

## **12.01 TERMINATION AND SUSPENSION**

A. City has the right to terminate this Agreement, in whole or in part, for convenience and without cause, at any time upon thirty (30) days’ written notice to Services Provider.

B. In the event of any default by Services Provider, City has the right to terminate this Agreement for cause, upon ten (10) days' written notice to Services Provider.

C. Services Provider has the right to terminate this Agreement only for cause, that being in the event of a material and substantial breach by City, or by mutual agreement to terminate evidenced in writing by and between the parties.

D. In the event City terminates under subsections (A) or (B) of this section, the following shall apply: Upon City's delivery of the referenced notice to Services Provider, Services Provider shall discontinue all services in connection with the performance of this Agreement and shall proceed to cancel promptly all existing orders and contracts insofar as such orders and contracts are chargeable to this Agreement. Within thirty (30) days after such notice of termination, Services Provider shall submit a statement showing in detail the goods and/or services satisfactorily performed under this Agreement to the date of termination. City shall then pay Services Provider that portion of the charges, if undisputed. The parties agree that Services Provider is not entitled to compensation for services it would have performed under the remaining term of the Agreement except as provided herein.

### **13.01 INDEMNIFICATION**

Services Provider shall defend (at the option of City), indemnify, and hold City, its successors, assigns, officers, employees and elected officials harmless from and against all suits, actions, legal proceedings, claims, demands, damages, costs, expenses, attorney's fees, and any and all other costs or fees arising out of, or incident to, concerning or resulting from the fault of Services Provider, or Services Provider's agents, employees or subcontractors, in the performance of Services Provider's obligations under this Agreement, no matter how, or to whom, such loss may occur. Nothing herein shall be deemed to limit the rights of City or Services Provider (including, but not limited to the right to seek contribution) against any third party who may be liable for an indemnified claim.

### **14.01 COMPLIANCE WITH LAWS, CHARTER AND ORDINANCES**

A. Services Provider, its agents, employees and subcontractors shall use best efforts to comply with all applicable federal and state laws, the Charter and Ordinances of the City of Round Rock, as amended, and with all applicable rules and regulations promulgated by local, state and national boards, bureaus and agencies.

B. In accordance with Chapter 2270, Texas Government Code, a governmental entity may not enter into a contract with a company for goods and services unless the contract contains written verification from the company that it: (1) does not boycott Israel; and (2) will not boycott Israel during the terms of this contract. The signatory executing this Agreement on behalf of Services Provider verifies Services Provider does not boycott Israel and will not boycott Israel during the term of this Agreement.

## **15.01 ASSIGNMENT AND DELEGATION**

The parties each hereby bind themselves, their successors, assigns and legal representatives to each other with respect to the terms of this Agreement. Neither party shall assign, sublet or transfer any interest in this Agreement without prior written authorization of the other party.

## **16.01 NOTICES**

All notices and other communications in connection with this Agreement shall be in writing and shall be considered given as follows:

1. When delivered personally to the recipient's address as stated in this Agreement;  
or
2. Three (3) days after being deposited in the United States mail, with postage prepaid to the recipient's address as stated in this Agreement.

### **Notice to Services Provider:**

Central Texas Elevator, LLC  
123 Bob's Trail  
Bastrop, Texas 78602

### **Notice to City:**

Laurie Hadley, City Manager  
221 East Main Street  
Round Rock, TX 78664

Stephan L. Sheets, City Attorney  
309 East Main Street  
Round Rock, TX 78664

Nothing contained herein shall be construed to restrict the transmission of routine communications between representatives of City and Services Provider.

## **17.01 APPLICABLE LAW; ENFORCEMENT AND VENUE**

This Agreement shall be enforceable in Round Rock, Texas, and if legal action is necessary by either party with respect to the enforcement of any or all of the terms or conditions herein, exclusive venue for same shall lie in Williamson County, Texas. This Agreement shall be governed by and construed in accordance with the laws and court decisions of the State of Texas.

## **18.01 EXCLUSIVE AGREEMENT**

This document, and all appended documents, constitutes the entire Agreement between Services Provider and City. This Agreement may only be amended or supplemented by mutual agreement of the parties hereto in writing, duly authorized by action of the City Manager or City Council.

## **19.01 DISPUTE RESOLUTION**

City and Services Provider hereby expressly agree that no claims or disputes between the parties arising out of or relating to this Agreement or a breach thereof shall be decided by any arbitration proceeding, including without limitation, any proceeding under the Federal Arbitration Act (9 USC Section 1-14) or any applicable state arbitration statute.

## **20.01 SEVERABILITY**

The invalidity, illegality, or unenforceability of any provision of this Agreement or the occurrence of any event rendering any portion or provision of this Agreement void shall in no way affect the validity or enforceability of any other portion or provision of this Agreement. Any void provision shall be deemed severed from this Agreement, and the balance of this Agreement shall be construed and enforced as if this Agreement did not contain the particular portion or provision held to be void. The parties further agree to amend this Agreement to replace any stricken provision with a valid provision that comes as close as possible to the intent of the stricken provision. The provisions of this section shall not prevent this entire Agreement from being void should a provision which is of the essence of this Agreement be determined void.

## **21.01 MISCELLANEOUS PROVISIONS**

**Standard of Care.** Services Provider represents that it employs trained, experienced and competent persons to perform all of the services, responsibilities and duties specified herein and that such services, responsibilities and duties shall be performed in a manner according to generally accepted industry practices.

**Time is of the Essence.** Services Provider understands and agrees that time is of the essence and that any failure of Services Provider to fulfill obligations for each portion of this Agreement within the agreed timeframes will constitute a material breach of this Agreement. Services Provider shall be fully responsible for its delays or for failures to use best efforts in accordance with the terms of this Agreement. Where damage is caused to City due to Services Provider's failure to perform in these circumstances, City may pursue any remedy available without waiver of any of City's additional legal rights or remedies.

**Force Majeure.** Neither City nor Services Provider shall be deemed in violation of this Agreement if it is prevented from performing any of its obligations hereunder by reasons for which it is not responsible as defined herein. However, notice of such impediment or delay in performance must be timely given, and all reasonable efforts undertaken to mitigate its effects.

**Multiple Counterparts.** This Agreement may be executed in multiple counterparts, any one of which shall be considered an original of this document; and all of which, when taken together, shall constitute one and the same instrument.

[Signatures on the following page.]

IN WITNESS WHEREOF, City and Services Provider have executed this Agreement on the dates indicated.

**City of Round Rock, Texas**

**Central Texas Elevator, LLC**

By: \_\_\_\_\_  
Printed Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date Signed: \_\_\_\_\_

By: \_\_\_\_\_  
Printed Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date Signed: \_\_\_\_\_

**Attest:**

By: \_\_\_\_\_  
Sara L. White, City Clerk

**For City, Approved as to Form:**

By: \_\_\_\_\_  
Stephan L. Sheets, City Attorney





# Central Texas Elevator, LLC

PO Box 2155  
Bastrop, Texas 78602  
Phone: 512-897-6056

Date: 7<sup>th</sup> Day of May, 2020

Attn: Corey Amidon  
**City of Round Rock**  
212 Commerce Blvd  
Round Rock, Texas 78664  
512-516-4953

Location: Parking Garage  
221 East Main Street  
Round Rock, Texas 78664

## *Equipment:*

Quantity	Manufacturer	Description	Capacity LB	Speed FPM
1	Dover DMC	Hydraulic Passenger	2100	100

**Central Texas Elevator, LLC** ("CTE, "we, "us") PO Box 2155, Bastrop, Texas 78602, and **City of Round Rock, 212 Commerce Blvd, Round Rock, Texas 78664**. ("Customer", "you") agree as follows:

CTE will:

- Obtain permits from Texas Department of Licensing and Regulation (TDLR)
- Remove existing pump unit, travel cable, hoistway harness, controller, car top inspection station
- Remove existing door operator, car door header, track, door hangars, door clutch, sensor edge
- Remove existing main car station, direction indicators, push button stations, emergency light, ada telephone
- Install new hydraulic submersible pump unit, travel cable, hoistway harness, GAL door operator, car door header, track, door hangars, car door clutch, sensor edge, interlocks, pickup rollers
- Install new fixtures; main car station with vandal resistant pushbuttons; car position indicator; emergency light; ADA telephone; fire service phase 2 cabinet; car direction indicator with audible signals for direction of next travel; surface mount hall push button stations with vandal resistant buttons; fire service phase 1 at main landing; phone line monitoring at main landing; hoistway access at terminal landings
- Fixture cover plates will have stainless steel # 4 finish
- Install New Smartrise Controller with new selector and car top inspection station
- Install New cab with Vandal resistant wall panels; Vandal resistant car door; front return; transom; and strike panel; stainless steel # 4 ceiling with recessed LED lighting; one handrail on the rear wall stainless steel # 4; aluminum sill
- Install sump pump into elevator pit
- Perform inspection per state requirement with weights per TDLR
- Return car to service

To the elevator at Round Rock City Hall for the sum of:

**\$ 119,862.00**

**Payment Terms are 50 % due upon delivery of parts and material (\$ 59,931.00)**

**50% due upon completion of project (\$ 59,931.00)**

All quoted prices include freight

## Exhibit "A"

Our proposal is based on the following clarifications.

Contract terms between Central Texas Elevator LLC and Purchaser shall be based on this Proposal and a mutually agreed upon contract to perform the work

Clarifications:

1. All new elevator equipment provided shall meet applicable ASME A17.1-2007 code requirements. Any provisions of codes applicable to out-of-scope items shall be the Purchaser's responsibility. Cost of any future code changes adopted prior to permitting and completion are excluded.
2. Proposal includes a Twelve (12) month Warranty on the equipment provided and installation only.
3. Proposal excludes any extra demobilizations and remobilizations. If we must demobilize from the jobsite for any reason outside our control, we shall be compensated at our regular billing rates.
4. Proposal pricing is based on the scope of work as defined herein. Any additional work required will be performed only upon Purchaser's approval of a mutually agreeable change proposal. Any other deficiencies revealed in the progress of the work will be promptly reported to purchaser with recommendations and cost for corrective action.
5. Abatement of asbestos or other hazardous materials is excluded and if required by this project, shall be provided by others. Costs of any abatement plans, procedures, disposal, documentary air monitoring, filing of notices, or other asbestos-related work shall be the responsibility of the Owner or Purchaser.
6. Purchaser shall provide any security, escort or other building service support personnel required during demolition, installation, testing, and inspections.
7. Project schedule are to be mutually agreeable between Central Texas Elevator LLC and your firm.
8. Customer agrees to allow Central Texas Elevator, LLC to video the project while on the jobsite.
9. It is assumed that we may work between the hours of 6:00 AM and 5:30 PM, Monday-Friday. No overtime or premium time work has been included within our base bid. The standard wage rate is assumed.
10. Indemnification. To the fullest extent permitted by law, CTE agrees to indemnify, hold harmless, protect and defend Customer, its agents, representatives, officers, directors, employees, affiliates, managers, and property owners (collectively, the "Customer Indemnified Parties") from and against any and all liabilities, claims, demands, causes of action, administrative or regulatory proceedings, liens, settlements, judgments and expenses, including, but not limited to, reasonable attorney's fees, court costs, and investigative costs, directly or indirectly resulting from bodily injury, personal injury, or death, or property damage, sustained or alleged to have been sustained by any business, organization or person, including employees of CTE and any subcontractors, arising out of or in connection with the performance of the work in this agreement by CTE, its agents, servants, employees, or independent contractors retained or hired by CTE. This indemnification also includes costs, losses or damages resulting from or alleged to result from either active or passive negligence of any Customer Indemnified Parties concurrent with that of CTE or others, but, except with respect to bodily injury claims brought against Customer Indemnified Parties by families of employees of contractors or employees of CTE, where employees are prevented by Workers' Compensation statutes from alleging CTE negligence, shall not apply to instances of the actual sole negligence of any Customer Indemnified Party nor shall it apply in any instance to loss attributable to the in-fact willful misconduct on the part of any Customer Indemnified Party. Each Customer Indemnified Party shall have the right to participate in the defense of any claim against it that is covered by CTE's obligations hereunder, including the right to retain its own legal counsel of its choice.
11. Insurance. CTE agrees to maintain in full force and effect, continuously during the term of this agreement and thereafter (as set forth herein), in form and content and with insurers approved by Customer, and at CTE's sole cost and expense, the following policies of insurance:

Workers' Compensation. Workers' Compensation Insurance in compliance with the laws of the State of Texas, including Employer's Liability Insurance in an amount not less than \$1,000,000/\$1,000,000/\$1,000,000. In Texas, all contractors and subcontractors shall be participants in a workers' compensation program, and shall not have "opted out."

## Exhibit "A"

Commercial General Liability. Commercial General Liability insurance with defense costs in addition to limits, insuring Bodily Injury and Property Damage, including Products and Completed Operations coverage, Contractual Liability Coverage, Independent Contractors' coverage, Personal Injury and Advertising Injury coverage without exclusion for explosion, collapse or underground hazards, in an amount not less than \$1,000,000 per occurrence limit, \$1,000,000 personal and advertising injury limit, \$4,000,000 products-completed operations aggregate limit and \$4,000,000 general aggregate limit, with a per location or per project endorsement specifying the property, on which policy the Customer Indemnified Parties shall be named as additional insureds by (i) ISO form CG 20 10 11 85 or (ii) both ISO forms CG 20 10 07 04 and CG 20 37 07 04, or equivalents acceptable to Customer, including, but not limited to, for liabilities arising from both CTE's ongoing operations and completed operations, for as long as the additional insureds may be exposed to liability arising from CTE's work. Such policy shall be the primary coverage for all liabilities of whatever type and nature and shall not seek contribution from any insurance maintained by or available to the additional insureds.

Automobile. Automobile Liability Insurance on all owned, non-owned, hired and/or leased automobiles used in connection with the performance of the work in amounts not less than \$1,000,000.00 Combined Single Unit for bodily injury and property damage. If CTE transports any Hazardous Materials, the automobile liability insurance policy shall include ISO endorsement form MCS-90, or equivalent endorsement acceptable to Customer, providing coverage for pollution claims.

Professional Liability. If CTE's work includes professional services, including but not limited to design or engineering services, by professionals on staff or under consulting agreements, CTE shall obtain and maintain, and shall require its independent consultants to obtain and maintain, Professional Liability insurance in limits not less than \$1,000,000 per claim and \$1,000,000 annual aggregate, covering the professional services performed in connection with the work. This coverage form may be "claims made" and include defense expense within the limit of liability. If the policy is written on a claims-made basis, CTE warrants that any retroactive date applicable to coverage under the policy precedes the effective date of this agreement and CTE's work in, at or about the property; and that continuous coverage will be maintained, or an extended reporting period shall be included, for a period of 10 years beginning from the time that work under the agreement is completed.

**ACCEPTANCE:** This proposal becomes a valid agreement when executed by the Customer and Central Texas Elevator, LLC. This agreement and its parties are subject to the laws of the state of Texas. This proposal is valid for sixty (60) days and is subject to escalation thereafter.

By: \_\_\_\_\_  
\_\_\_\_\_  
Date  
(Print Name)

By: \_\_\_\_\_  
Central Texas Elevator, LLC  
\_\_\_\_\_  
Date  
(Print Name)