



Highway Department

Telephone: 701-298-2370

Fax: 701-298-2395

SMB-HWY@casscountynd.gov

MEMORANDUM

TO: Cass County Commission

FROM: Jason Benson, County Engineer *JB*

DATE: October 31, 2023

SUBJECT: Consent Agenda Item for November 6, 2023 Commission Meeting: Transport Truck Purchase

The 2021 budget include the purchase of a transport truck for hauling equipment from our various jobsites. We have been actively looking for a used truck since this was approved with no luck. Numerous local vendors have been searching for us as well, and we have found a truck that suits our needs. I am recommending we purchase a used 2017 Kenworth T880 from Wallwork Truck Center out of our 2023 Heavy Equipment line item.

I am recommending that the Commission approve the purchase of the Kenworth T880 from Wallwork Truck Center for a total of \$79,900.00.

SUGGESTED MOTION: AUTHORIZE CHAIRMAN TO APPROVE A PURCHASE ORDER FOR THE PURCHASE OF A KENWORTH T880 FOR \$79,900.00 FROM WALLWORK TRUCK CENTER.



Buyer's Order

Deal #: 5089
Contract Date: 3/24/2023

"The Truck People"

Fargo-WTC
900 35th St N
Fargo, ND 58102
Phone: 701 476-7000
TF: (800) 937-3003

Contact: Andy Robinson - Phone: (701) 476-7457 - Mobile: +1 7018935897 - Email andy.robinson@wallworktrucks.com

Bill To: Cass County Highway Department 1201 Main Avenue West West Fargo, ND 58078 Phone: 701-298-2377	Cass County Highway Department 1201 Main Avenue West West Fargo, ND 58078
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Stock#: CHJ157543	VIN: 1XKZDP9X0HJ157543	2017 Kenworth T880	Price: \$79,900.00
Engine: MX13 Paccar			
Transmission: FAOM-15810C auto trans Ratio: 3.42 Wheelbase:225			
			Per Unit Subtotal: \$79,900.00
			Total Price: \$79,900.00

Cass County Highway Department

Buyer
DocuSigned by:
Blaine Laaveg

79ED3AD3C5AD4B5...
Buyer Signature

10/31/2023

Date Signed

Andy Robinson

Salesperson

Salesperson Signature

10/31/2023

Date Signed



"The Truck People"

Fargo-WTC

900 35th St N

Fargo, ND 58102

Phone: 701 476-7000

TF: (800) 937-3003

ADDITIONAL TERMS AND CONDITONS

1. As used in the Order the terms (a) "Seller" means W. W. Wallwork, Inc., to whom this Order is addressed, (b) "Buyer" means the party executing this Order, and (c) "Manufacturer" means the Corporation that manufactured the vehicle or chassis, it being understood by Buyer and Seller that Seller is not the agent of Manufacturer, that Seller and Buyer are the sole parties to this Order and that reference to Manufacturer herein is for the purpose of explaining generally certain contractual relationships existing between Seller and Manufacturer herein is for the purpose of explaining generally certain contractual relationships existing between Seller and Manufacturer with respect to new motor vehicles and between Buyer and Manufacturer with regard to warranties.
2. Manufacturer has reserved the right to change the price to Seller of new motor vehicles without notice. If the price to Seller of new motor vehicles of the series and body type ordered hereunder is changed by Manufacturer prior to delivery of the new motor vehicle ordered hereunder to Buyer, Seller reserves the right to change the cash delivered price of such motor vehicle to Buyer accordingly. If such cash delivered price is increased by Seller, Buyer may, if dissatisfied therewith, cancel this Order, in which event if a used motor vehicle has been traded in as part of the consideration for such new motor vehicle, such used motor vehicle shall be returned to the Buyer upon payment of a reasonable charge for storage and repairs (if any) or, if such used motor vehicle has been previously sold by Seller, the amount received therefore, less a selling commission of 15% and any expense incurred in storing, insuring, conditioning or advertising said used motor vehicle for sale, shall be returned to Buyer.
3. If the used motor vehicle has been traded in as a part of the consideration for the motor vehicle ordered is not to be delivered to Seller until delivery to Buyer of such motor vehicle, the used motor vehicle shall be reappraised at that time and such reappraised value shall determine the allowance made for such used motor vehicle. If such reappraised value is lower than the original allowance shown on the front of this order, Buyer may, if dissatisfied, cancel this Order, provided that such right to cancel is exercised prior to the delivery of the motor vehicle ordered to the Buyer and surrender of the used motor vehicle to Seller.
4. Buyer agrees to deliver to Seller satisfactory evidence of title to any used motor vehicle traded in as part of the consideration for the motor vehicle ordered at the time of delivery of such used motor vehicle to Seller. Buyer warrants any such used motor vehicle to be his property free and clear of all liens and encumbrances except as otherwise noted herein.
5. Unless this Order shall have been cancelled by Buyer in accordance with the provisions of paragraph 2 or 3 above, Seller shall have the right, upon failure or refusal of Buyer to accept delivery of the motor vehicle ordered and to comply with the terms of the Order, to retain as liquidated damages any cash deposit made by Buyer, and, if a used motor vehicle has been traded in as a part of the consideration for the motor vehicle ordered hereunder, to sell such used motor vehicle and reimburse himself out of the proceeds of such sale for the expenses specified in paragraph 2 above and for such other expenses and losses as Seller may incur or suffer as a result of such failure or refusal by Buyer.
6. Manufacturer has reserved the right to change the design of any new motor vehicle, chassis, accessories or parts thereof at any time without notice and without obligation to make the same or any similar change upon any motor vehicle, chassis, accessories or parts thereof previously purchased by or shipped to Seller or being manufactured or sold in accordance to Seller's orders. In the event of any such change by Manufacturer, Seller shall have no obligation to Buyer to make the same or any similar change in any motor vehicle, chassis, accessories or parts thereof covered by this Order either before or subsequent to Buyer delivery.
7. Seller shall not be liable for failure to deliver or delay in delivering the motor vehicle covered by this Order where such failure or delay is due, in whole or in part, to any cause beyond the control or without the fault or negligence of Seller.
8. The price of the motor vehicle does not include federal excise taxes, sales taxes, use taxes or occupational taxes based on sales volume (federal, state or local), unless expressly so stated. Buyer assumes and agrees to pay unless prohibited by law, any such excise, sales, use or occupational taxes imposed on or applicable to the transaction covered by this Order, regardless of which party may have primary tax liability therefore.
9. If a charge for Creditor Life Insurance is included in this Order, the provisions on creditor Life Insurance in any retail installment contract form subsequently executed between the parties in conjunction with this Order shall be fully effective. If such insurance is unavailable or partly unavailable under the designated policy, the applicable portion of the charge for Creditor Life Insurance specified herein, and the finance charge thereon, may be deducted from the Total Time Balance and credited to the Buyer. If such insurance does not become effective, notice will be sent to the Buyer by the Seller and this Order and any retail installment contract executed in conjunction therewith shall otherwise remain fully effective.
10. Buyer, before or at the time of delivery of the motor vehicle covered by this Order, will execute such other forms of agreement or documents as may be required to by the terms and conditions of payment indicated on the front of this Order.

BUYER'S INITIALS

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Administration

Telephone: 701-241-5770

Fax: 701-241-5776

wilsonro@casscountynd.gov

MEMO

TO: County Commission
FROM: Taylor Kaushagen
Date: October 23, 2023
Subject: Purchase of repair to Annex elevator modernization

Buildings and Grounds is requesting \$199,000 to modernize elevator #2 in the Annex. The current elevator has been in use since 1995 and the old electronic parts are becoming obsolete. The 2023 budget included \$125,000 to modernize elevator #1 in the Annex and will be ordered and completed at the same time for efficiencies, this purchase was approved on August 7, 2023. The 2024 budget includes \$200,000 for the purchase. The work will be completed in 2024.

Buildings and Grounds received three quotes for the elevator modernization as follows:

<u>Company</u>	<u>Bid Amount</u>
MEI Total Elevator Solutions	\$199,000
TKE Elevator	\$205,833.38
OTIS	\$315,400

SUGGESTED MOTION: Authorize the purchase of Annex elevator #2 modernization in the amount of \$199,000 from MEI Total Elevator Solutions.

Date: 7/18/2023

QUOTE NUMBER: 18676 - Rev 3

Elevator Modernization Agreement

EQUIPMENT LOCATION:

Overhead Traction Mod - Car 2
211 9th Street
Fargo , ND 58103

SUBMITTED TO:

Cass County Fargo
211 9th st
Fargo , ND 58103

ELEVATOR DESCRIPTION:

Elevator ID: TBDCASSCTY - Car 2
Description:

ATTN:

Gene
701-541-0713

Type of Work: Modernization

This Modernization Agreement ("**Agreement**") is proposed as of this 18th day of July, 2023 ("**Effective Date**") between MEI Total Elevator Solutions ("**MEI**"), and "**Customer**": Cass County Fargo , 211 9th st, Fargo , ND 58103. MEI and Customer are collectively referred to herein as the "**Parties**" or individually as a "**Party**". MEI proposes to furnish certain maintenance services to Customer as provided herein.

Scope of Work:

MEI is providing this proposal to perform the following work:

Work to be completed by MEI For Car 2

• **New Controller**

- Supply and replace existing obsolete controller with non proprietary solid state controller. This controller will be non-proprietary and anyone will be able to work on it in the future. No programming tool will be needed to work on this new controller.

• **New Machine and Motor Equipment**

- Supply and replace existing machine and motor with a new Hollister Whitney machine and motor with new variable speed drive motor
- Installation of new emergency brakes
- Installation of new rope gripper for unintended elevator motion
- Installation of new Hollister Whitney governor
- Installation of new drive and tail sheave
- Installation of new hoist ropes with shackles
- Installation of new governor ropes
- Installation of new bedplates and isolation beams for new Machine and Motor

• **New Fixtures**

- Supply and replace fixtures with new stainless steel Innovation Fixtures, which includes car station, car position indicator, hall stations, hall position indicators, new emergency phone if applicable, phase I & phase II fire fighters service key switches if applicable.
- Supply stainless steel cover plates as needed

• **New Door Equipment**

- Supply and replace front door operator with new GAL MOVFR11 closed loop door operator
- Supply and replace header and door tracks as needed for installation of door operator
- Supply and install new door clutch and restrictors
- Supply and replace rollers, pickup rollers, and door locks as needed
- Supply and install new door edge protection sensor

• **New Hoistway Equipment**

- Supply and replace traveler cable and associated wiring
- Supply new pipe and wiring as needed
- Supply and install new cartop station
- Supply and install escape hatch
- Supply and replace conduit as needed

• **Project Breakdown:**

- Labor Cost: \$122,174.73
- Material Cost: \$76,825.27
- Total Project Timeline: 7 weeks per elevator

Date: 7/18/2023

QUOTE NUMBER: 18676 - Rev 3

Subject to the provisions of this Agreement, MEI will perform the work as described in this section. If Customer requests services not listed, Customer agrees to pay MEI for such additional work at MEI's then-current rates. The Work will be provided pursuant to the terms and conditions in this Agreement and MEI's Terms and Conditions (the "**T&C**").

Price:

\$199,000.00

Payment Terms:

All Modernization Fees are due and payable to MEI on the following schedule:

- 40% of the Modernization Fee is due at the time of signing this Agreement. Customer understands that MEI will not order parts or materials, or schedule the Work, until this payment has been received by MEI.
- 35% of the Modernization Fee will be billed when a majority of the materials have been received. Customer understands that MEI will not schedule the Work until this payment has been received. Customer understands that timing issues may result in needing to expedite this payment.
- The Balance (approximately 25%) of the Actual Modernization Fee will be billed upon completion of the Work. The payment terms for this portion of the Work will be due in Net 30 terms.

If Customer fails or refuses to pay MEI all or any part of the Fees when due, MEI may use any remedy specified in the T&C. Invoices issued under this Agreement for additional work will be billed as the work is performed and are due and payable to MEI on a Net 30-day basis. If, at any time, the Work is terminated by either Party, MEI will issue a final invoice to the Customer. Customer agrees to immediately issue payment to MEI for all work completed up to the termination date.

Agreement Terms

The Term of this Agreement starts when fully executed by both Parties and terminates when the Work is performed by MEI and paid for by Customer. Notwithstanding the foregoing, if Customer has not made any preliminary payment required in Payment Terms within 15 days of signing this Agreement, MEI may terminate this Agreement upon notice to Customer, and without any liability to Customer.

The provision of the Work and payment therefore is subject to, and Customer agrees to be bound by the T&C as published by MEI from time to time, a current copy of which is attached hereto. This Agreement: (i) may be executed in counterparts, including electronic counterparts, each of which shall be deemed an original but all of which shall be deemed one and the same Agreement; (ii) is binding upon and inures to the benefit of MEI and Customer and their respective successors, transferees, or assignees; (iii) together with the T&C, constitutes the entire agreement between the Parties with respect to the subject matter hereof, superseding all prior agreements, representations, communications and understandings, oral or written; and (iv) may not be amended except by a written agreement signed by both Parties. If there is a conflict between the terms of this Agreement, the Proposal and the T&C, the T&C shall govern and supersede the Agreement and the Proposal.

By signing this Agreement, Customer hereby applies for credit and affirms financial responsibility, ability and willingness to pay invoices in accordance with the terms of this Agreement as well as any additional work requested by the Customer which may be done outside this Agreement. The above information is warranted to be true and complete. Customer hereby authorizes MEI to verify and collect information on Customer, including but not limited to bank references, trade credit references, consumer and/or commercial credit reports. Customer agrees to pay: (i) a monthly finance charge equal to the maximum applicable state rate on all past due balances; and (ii) all costs of collection and attorney's fees incurred by MEI arising from any default by Customer under this Agreement. Customer agrees that all decisions with respect to the extension or continuation of credit shall be in the sole discretion of MEI.

Acceptance of Proposal

IN WITNESS WHEREOF, each Party represents that it has caused this Agreement to be executed by an authorized agent or representative who, on the date of such signing, has the necessary authority, corporate, municipal, or otherwise, to bind the Party. By signing below, Customer agrees to engage MEI to perform the Work in accordance with this Agreement and the T&C and agrees to pay for all Work.

(CUSTOMER)

Approved by Authorized Representative

Signed: _____

Accepted by:

MEI Total Elevator Solutions

Approved by Authorized Representative

Signed: _____



MEI

TOTAL ELEVATOR SOLUTIONS

Duluth Office
4504 Grand Avenue, Suite 5
Duluth, MN 55807
Phone: (218)722-9600 Fax: (218)727-9032
www.meiusa.com

Date: 7/18/2023

QUOTE NUMBER: 18676 - Rev 3

Date: _____

Date: _____

Print Name: _____

Print Name: Matt LaFlamme

Title: _____

Title: Account Manager

Phone: _____

Phone: 218-343-2793

Email: _____

Email: matt.laflamme@meiusa.com

Name of Company: _____

Customer Purchase Order: _____

Principal, Owner or Authorized Representative or Owner

Agent: _____
(Name of Principal or Owner)

Date: 7/18/2023

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MEI STANDARD EXCEPTIONS/QUALIFICATIONS/NOTES:

- This bid is valid only if a mutually agreeable contract, schedule and completion date can be obtained. Any changes must be seen and agreed to by MEI in writing.
- Installation must begin within six (6) months of contract date, or as shown on the published construction schedule. If installation does not begin within six (6) months of the contract date or as shown on published construction schedule, the project may be subject to an escalation fee for material costs and labor rate increases. Price is subject to change if any customer supplied information changes after booking, or upon review of additional and or updated information.
- If MEI is forced to store elevator equipment in warehouse due to a customer initiated install start date change, the customer will be responsible for additional storage fees.
- MEI does not carry professional liability insurance. Professional liability insurance will not be provided if bid is accepted.
- Our bid is based on timely return of all approved submittal drawings and allowing for manufacturing lead-time of 12 weeks after approvals.
- Exception is taken to any ambiguous, vague, not clearly evident in bid information and/or inexplicit liquidated damage stipulations.
- Exception is taken to retainage in excess of (5%) five percent.
- Exception is taken to any retainage if a performance/payment bond is required.
- Exception is taken to retainage for clean-up.
- Minnesota Elevator has included the necessary mobilization to and from this project in the above bid. If for any reason beyond our control; MEI is forced into additional mobilization on this project, (incomplete hoistway or machine room, lack of power, etc.) a remobilization fee of \$7,500.00 will be charged for each occurrence.
- On-site storage, approximately 20'x25' per elevator adjacent to the hoistway at bottom landing is required. If off-site storage is required, an additional charge will be assessed for the first three months to cover any double handling, storage or re-transportation of elevator material required by the general contractor/owner or agent thereof. After the first three months, an additional monthly charge will be assessed for storage until the material arrives on site.
- Bid includes one inspection per state permit. If more than one inspection is needed due to causes other than MEI, additional charges of then current hourly rate of MEI plus any applicable state re-inspection fees will be assessed.
- This bid does not include any provisions for construction use of the elevator.
- Should temporary service be required it will be provided for an additional \$150 per week per elevator. The Owner/General Contractor will be responsible for operators, protection of the elevator, and restoration costs of the elevator after the temporary service is complete. Owner/General Contractor will also be responsible for any additional inspection, permitting fees, and inspection time involved with the temporary service.
- This bid does not include any provisions for owner instruction and or training
- Certificates for Two million General Liability Insurance and Ten Million Umbrella Insurance coverage will be issued.
- If additional crews are requested and MEI has the resources to accommodate this request there will be a minimum charge of \$7,500.00 (MEI has provided one crew for this bid).
- This bid will become a rider, attachment or addendum to any contract issued.
- Any contract resulting from this bid is conditioned on neither party being liable to the other for any loss, damage or delay due to any cause beyond your or our reasonable control, including but not limited to acts of government, strikes, lockouts, fire, explosion, theft, floods, riot civil commotion, war, malicious mischief or act of God. Under no conditions, shall either party be liable for special, indirect, or consequential damages in contract tort, including negligence, warranty or otherwise, notwithstanding any indemnity provisions to the contrary.
- Permanent power to be provided by others to hoistway and machine room.
- Hoisting beam to be furnished and installed by others.
- Cutting, patching, grouting and fire caulking will be done by others at no cost to MEI.
- Flooring provided and installed by others.
- Pit floor and walls must be finished and backfilled before we can start.
- GC must provide forklift or appropriate handling equipment to unload MEI equipment at no cost to MEI.
- Barricading to be provided by others. MEI will replace barricade we remove as part of our work.
- Disposal of construction debris and packaging resulting from this installation or removal will be by others.
- MEI will place debris in dumpster or other receptacle provided and paid for by others or as reasonably directed.

Disposal Contaminated Oil or Hydraulic Fluid (as applicable):

MEI will not be responsible for the disposal of any contaminated soil or hydraulic fluid that is removed from the cylinder hole. We will also not be responsible for any required clean up costs, fines or penalties that may result from this oil loss. Notification of the EPA and inspection of the ground soil is the responsibility of the owner, if they elect to do so.

Date: 7/18/2023

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Jack Hole Clause (as applicable):

- If the jack ceases to move during the removal process period of eight (8) hours, additional labor and specialty equipment required to move the jack will be performed on a time and material basis.
- Indoor Drilling - The hydraulic jack replacement is based on the existing jack hole being plumb and cased to prevent the Jack hole from collapsing once the existing jack is removed. If we encounter such conditions that hinder us from installing the new jack as noted in the aforementioned assumption, and indoor drilling is necessary, we will stop work and notify you immediately. Upon execution of a change order, with the cost and additional time being outlined and agreed to by purchaser, we will resume work
- If problems with the original construction of the jack hole exist (not deep enough, not plumb, not cased, concrete obstruction, flowing water or any obstruction prohibiting clean out and installation of new jack) additional work will be performed on a time and material basis.
- If ground water becomes a problem in the elevator pit during the jack replacement process, it will be the responsibility of the owner to address the issue so that work can continue. The contractor is not responsible for any water problems.
- Charge out rates applying to this Hole Clause are a per hour rate of \$250 per man plus materials
- The price of the driller and any related materials required will be in addition to our labor charges listed above

We will notify you prior to enacting this clause should it become necessary.

Date: 7/18/2023

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MEI TERMS AND CONDITIONS ("T&C")

1. Purchase and Payment. Pursuant to the applicable Repair Agreement, purchase order or quote (collectively, "Agreement"), Customer agrees to purchase the parts, machinery or equipment (collectively, "Product") or Work described in the Agreement. Except as defined herein, all capitalized terms have the meaning ascribed to them in the Agreement. Customer agrees to pay all sums specified in the Agreement within 2 days of the due date, without any deduction or setoff. MEI reserves the right to add all applicable taxes as prescribed by law. Customer shall pay any and all of Customer's third-party vendor fees, such as, but not limited to accounts receivable / payable administrators. All credit card payments made by Customer may be subject to the addition of credit card processing fees. If customer elects to pay MEI by credit card, Customer agrees to these fees. Customer agrees to receive MEI's invoices electronically, and if Customer requires other delivery, shall pay MEI's then-current delivery fee.

2. Standard Warranty. MEI warrants that any new Product, including materials and equipment to be furnished as part of the Product or Work, shall be of good quality, in conformance with all legal requirements, and will be free from defects in material and workmanship for twelve (12) months from the date of installation (the "Standard Warranty"). Any refurbished parts, if available, carry a warranty that such parts shall be of good quality and free from defects in materials and workmanship for a period of ninety (90) days from installation. This Standard Warranty shall not apply to: (i) any Product that has been subject to misuse, misapplication, neglect (including without limitation improper maintenance and storage), accident, improper installation, modification (including without limitation use of unauthorized parts of attachments), adjustment or repair; or (ii) damage, loss, or diminution of or to any Product related to normal wear and tear, or usage of wear parts. (iii) damage caused by disasters such as fire, flood, wind, lightning, electrical surge or power outage; (iv) corrosion from exposure to liquids or atmospheres; (v) any parts or components installed or modified by a non-MEI mechanic after the completion of the Work; or (vi) Customer's failure to properly clean or care for the Product after completion of the Work. Notwithstanding any contrary provision or agreement, MEI's maximum liability for Products, whether in contract, negligence, or strict liability in tort, is limited to the repair or replacement of the Product at issue, or the parts thereof.

3. Repair Terms and Conditions. Customer shall: (i) cooperate with MEI in all matters relating to the Work, and respond promptly to MEI's request to provide direction, information, approvals, authorizations and decisions; and (ii) obtain and maintain all necessary permits related to the equipment; and provide all wiring prints and diagrams and a copy or version of the controller software. Customer agrees to provide MEI with full immediate access to all areas of Customer's facility in which the elevator(s) and associated equipment is located in order to perform the Work in the Agreement. Failure to provide such access will result in the Fees being earned and payable by Customer, even if the applicable Work is not completed. Customer shall provide a clear and accessible machine rooms(s) and elevator pit area(s) for the Work to be completed. The machine room and elevator pits must be free from water, debris and stored materials. MEI is not responsible or liable for personal injury or property damage due to the action or failure of any part of the elevator equipment during testing. If subsequent repairs are necessary to obtain proper operation of the equipment to meet the requirements of these tests, such work will be proposed at additional cost under separate work order. Any testing of emergency/standby power systems that require immediate completion will be billed at current charge out rates and in addition to the Repair Fee.

4. Limitations. Unless directly resulting from MEI's gross negligence or willful misconduct, nothing herein or in the Agreement shall be construed to mean that MEI assumes any liability for any accidents or injury to persons or property. Customer retains all liability and responsibility for accidents or injuries to any person or property while riding on or being in or about the subject elevators or related equipment.

(a) **DAMAGES.** IN NO EVENT SHALL MEI OR ANY OF ITS EMPLOYEES, OFFICERS, MANAGERS, DIRECTORS, OWNERS, SUCCESSORS OR ASSIGNS BE LIABLE UNDER THE AGREEMENT OR THESE T&C TO CUSTOMER OR ANY THIRD PARTY FOR ANY CONSEQUENTIAL, INCIDENTAL, INDIRECT, EXEMPLARY, SPECIAL OR PUNITIVE DAMAGES, INCLUDING ANY DAMAGES FOR BUSINESS INTERRUPTION, LOSS OF USE, DATA, REVENUE OR PROFIT, WHETHER ARISING OUT OF BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE) OR OTHERWISE, REGARDLESS OF WHETHER SUCH DAMAGES WERE FORESEEABLE AND WHETHER OR NOT CUSTOMER WAS ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

(b) **MAXIMUM LIABILITY.** EXCEPT WHERE A LIABILITY DIRECTLY RESULTS FROM MEI'S GROSS NEGLIGENCE OR WILLFUL MISCONDUCT, WITHOUT LIMITING THE PROVISION OF SECTION 4(a), IN NO EVENT SHALL MEI'S AGGREGATE LIABILITY EXCEED, WITH RESPECT TO PRODUCTS OR SERVICES, THE GREATER OF: (I) \$25,000; OR (II) THE TOTAL AMOUNT PAID TO MEI PURSUANT TO THE AGREEMENT IN THE TWELVE-MONTH PERIOD PRECEDING THE EVENT GIVING RISE TO THE CLAIM. The prior sentence limiting liability and damages is a material part of the Agreement, and MEI would not have sold the Product or provided the Services on terms as favorable to Customer as set forth in the Agreement.

(c) **EXCLUSIVE REMEDY.** CUSTOMER'S SOLE REMEDY WITH RESPECT TO PRODUCTS SHALL BE THE STANDARD WARRANTY, AND MEI'S SOLE LIABILITY SHALL BE COMPLIANCE WITH THE STANDARD WARRANTY.

5. Indemnification. Each Party (as "Indemnifying Party") shall indemnify, defend and hold harmless the other Party and its officers, managers, directors, employees, successors and assigns (collectively, "Indemnified Party") against all losses, damages, liabilities, claims, actions, judgments, settlements, awards, costs, or expenses of whatever kind, including reasonable attorneys' fees, actually incurred by Indemnified Party or actually awarded against Indemnified Party, resulting from: (i) breach or non-fulfillment of any representation, warranty or covenant under the Agreement by Indemnifying Party, its employees or agents; (ii) any negligent or more culpable act or omission of Indemnifying Party and its employees and agents (including without limitation reckless or willful misconduct) in connection with the performance of its obligations under the Agreement; (iii) bodily injury, death of any person or damage to real or tangible personal property caused by the negligent or more culpable acts or omissions of Indemnifying Party, its employees or agents (including any reckless or willful misconduct); or (iv) any failure by Indemnifying Party to comply with any applicable federal, state or local laws, regulations or codes in the performance of its obligations under the Agreement. Notwithstanding the foregoing, MEI shall not be obligated to indemnify any Customer Indemnified Party if the loss or damage arises from or relates to breach of the Agreement by, or negligence or misconduct of, Customer or its employees, agents, managers, representatives or contractors.

Date: 7/18/2023

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6. Default. An event of default ("**Event of Default**") under the Agreement or these T&C shall occur upon the occurrence of all or any one of the following events: (i) Customer does not pay any amount due to MEI under the Agreement; (ii) Customer ceases doing business as a going concern; (iii) Customer makes an assignment for the benefit of its creditors or admits in writing to its inability to pay its debts as they become due; (iv) Customer files, or has filed against it, a petition in bankruptcy or for its reorganization, arrangement, composition or readjustment under any state insolvency law or Customer liquidates all or a substantial part of its assets not in the ordinary course of its business, dissolves or takes other similar action; or (v) Customer shall default in the performance of any of its obligations arising under the Agreement, these T&C, any service schedule, or any other agreement between Customer and MEI, and such default is not cured within fifteen (15) days of MEI providing notice of same. MEI shall not be default of this Agreement unless and until Customer has notified MEI in writing of the alleged default, and MEI has had thirty (30) days to remedy the alleged default.

7. Remedies. Upon the occurrence of any Event of Default, MEI may at its option and without notice or demand, exercise all or any one of the following remedies: (a) upon written notice to Customer, terminate this Agreement and any other agreement between Customer and MEI; and/or (b) take additional action as may be appropriate to mitigate additional damages to MEI; The foregoing remedies are cumulative and may be exercised successively or concurrently.

8. Assignment. MEI may without the consent of Customer, assign MEI's rights and obligations under the Agreement, and may subcontract any portion of MEI's performance of the Agreement to a third-party. Customer may not assign the Agreement or otherwise transfer its rights or obligations under the Agreement to any third-party without the prior written consent of MEI. In the event of the sale, lease, assignment or other transfer of Customer's facility described herein, Customer agrees to disclose in writing to such successor the Agreement, and if all of Customers' obligations under the Agreement are not assumed in writing by such successor, Customer agrees to continue to be bound by the terms hereof.

9. Governing Law; Venue. The validity, construction and performance of the Agreement and these T&C shall be governed by and construed in accordance with the law of the state where the Services are performed, without reference to any choice of law principals, but the specific performance provisions and right of MEI to seek injunctive relief for Customer's breach of the covenants contained herein may also be enforced in any other state wherever such breach occurs, and in accordance with the laws of such other state, to the extent necessary to secure enforcement in such other jurisdiction.

10. Force Majeure. MEI shall not be liable for any failure of performance hereunder due to causes beyond its reasonable control, including but not limited to: act of God, fire, flood, earthquake, terrorist act, national emergency, war, strike, lock-out, change in law, work stoppage or other labor difficulty, action or inaction of an independent third party utilized in providing the Services, or unavailability of materials.

11. Waiver of Jury Trial. Each Party agrees that any controversy that may arise under the Agreement, including schedules attached to the Agreement, is likely to involve complicated and difficult issues and, therefore, each Party irrevocably and unconditionally waives any right it may have to a trial by jury in respect of any legal action arising out of or relating to the Agreement, or the transactions contemplated hereby.

12. General Provisions. The following sections of the T&C shall survive termination or expiration of the Agreement: 2, 3, 4, 5, 6, 7, 9, 10, 11, and 12. The relationship of the parties created by the Agreement is that of independent contractors and not partners, joint ventures, agents, or otherwise. No waiver by either Party of any right under, or breach of, any provision of the Agreement shall be construed as a waiver of any continuing or succeeding breach of such provision or right. The Agreement these T&C: (i) are binding upon and inure to the benefit of MEI and Customer and their respective successors, transferees, or assignees; and (ii) constitute the entire agreement between the Parties with respect to the subject matter of the Agreement, superseding all prior agreements, representations, communications and understandings, oral or written. A determination that any provision of the Agreement is invalid or unenforceable shall not affect the other provisions of the Agreement. The Agreement may not be amended or modified except by a written agreement signed by both Parties. In the event of a conflict between the main body of the Agreement and these T&C, these Agreement will take precedence, and shall supersede and be controlling over the T&C. By accepting delivery of the Products or Services, Customer is also agreeing to these T&C. Except for the money due upon an open account, no action may be brought for any breach of the Agreement or these Terms and Conditions more than one (1) year after the accrual of such cause of action. Customer agrees to receive invoices, notices and other communications under this Agreement at the address listed in the Agreement until Customer notifies MEI in writing of any changes in mailing address. Failure to notify MEI of any address changes does not change the delivery status of delivered invoices or other notices. Customer agrees to promptly notify MEI of any billing errors and understands that its failure to notify MEI does not change the due date or payment status of an invoice.



Vendor information

MEI TOTAL ELEVATOR SOLUTIONS
19336 607TH AVE
Mankato, MN 56001

Purchase order

Date
Prepayment obligation

PO-000148-1

11/01/2023
No

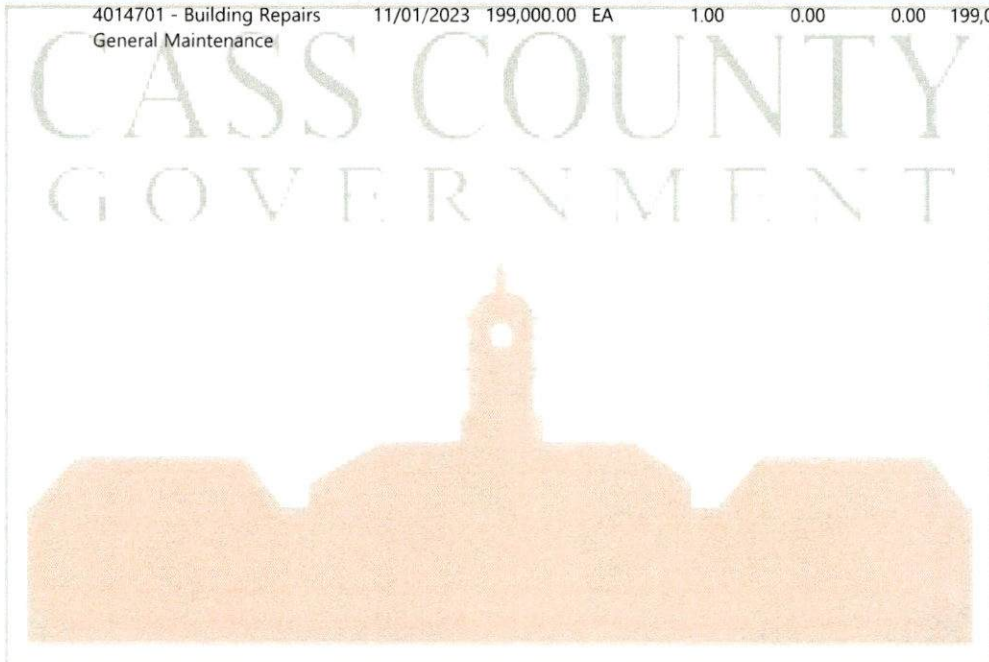
Delivery address

Cass County
211 9th St S
 Fargo, ND 58103

Attention information

Delivery terms

Line number	Item number	Description	Delivery	Quantity	Unit	Unit price	Discount	Discount percent	Amount	Print code
1		4014701 - Building Repairs General Maintenance	11/01/2023	199,000.00	EA	1.00	0.00	0.00	199,000.00	



211 9th St S
 Fargo, ND 58103

Telephone (701) 297-6000
Fax
Email address

Tax registration number
Tax exempt number

Signature _____