

**SUPPLEMENTAL SERVICE CONTRACT  
FOR WAS/RAS ELEVATOR MODERNIZATION SERVICES**

**TO THE NATIONAL COOPERATIVE AGREEMENT VIA METROPOLITAN GOVERNMENT  
OF NASHVILLE, TN #384899**

**THIS SUPPLEMENTAL SERVICE CONTRACT** is made and entered into as of the date fully executed below, by and between Orange County Sanitation District, with a principal place of business at 10844 Ellis Avenue, Fountain Valley, CA 92708 (hereinafter referred to as "OCSD") and Otis Elevator Company with a principal place of business at 711 E. Ball Road, Suite 200, Anaheim, CA 92805 (hereinafter referred to as "Contractor") collectively referred to as the "Parties".

**WITNESSETH**

**WHEREAS**, OCSD desires to temporarily retain the services of Contractor to perform Elevator Modernization Services at its Plant No. 2 Waste Activated Sludge (WAS) and Return Activated Sludge (RAS) facilities located at 22212 Brookhurst Street, Huntington Beach, CA 92646 "Services" as described in Exhibit "A"; and

**WHEREAS**, OCSD has chosen Contractor to conduct Services in accordance with Ordinance No. OCSD-52; and

**WHEREAS**, on December 16, 2020, the Board of Directors of OCSD, by minute order, authorized execution of this Contract between OCSD and Contractor; and

**WHEREAS**, Contractor is qualified by virtue of experience, training, and expertise to accomplish such Services.

**NOW, THEREFORE**, in consideration of the mutual promises and mutual benefits exchanged between the Parties, the Parties mutually agree as follows:

**1. Introduction**

1.1 This Contract and all exhibits hereto (called the "Contract") is made by OCSD and the Contractor. The terms and conditions herein exclusively govern the purchase of Services as described in Exhibit "A".

1.2 Exhibits to this Contract are incorporated by reference and made a part of this Contract as though fully set forth at length herein.

Exhibit "A"	Scope of Work - Conformed
Exhibit "B"	Bids
Exhibit "C"	Acknowledgement of Insurance Requirements
Exhibit "D"	OCSD Contractor Safety Standards
Exhibit "E"	Human Resources Policies
Exhibit "F"	National Cooperative Agreement Via Metropolitan Government of Nashville, TN #384899

1.3 In the event of any conflict or inconsistency between the provisions of this Contract and any of the provisions of the exhibits hereto, the provisions of this Contract shall in all respects govern and control.

1.4 The provisions of this Contract may be amended or waived only by a writing executed by authorized representatives of both Parties hereto.

- 1.5 The various headings in this Contract are inserted for convenience only and shall not affect the meaning or interpretation of this Contract or any paragraph or provision hereof.
- 1.6 The term “days”, when used in the Contract, shall mean calendar days, unless otherwise noted as business days.
- 1.7 OCSD holidays (non-working days) are as follows: New Year’s Day, Lincoln’s Birthday, Presidents’ Day, Memorial Day, Independence Day, Labor Day, Veterans Day, Thanksgiving Day, Day after Thanksgiving, Christmas Eve, and Christmas Day.
- 1.8 The term “hours”, when used in this Contract, shall be as defined in Exhibit “A”.
- 1.9 Work is to be performed Monday through Friday between the hours of 7:00 AM and 4:30 PM Pacific Time.
- 1.10 Contractor shall provide OCSD with all required premiums and/or overtime work at no charge beyond the price provided under “Compensation” below.
- 1.11 Except as expressly provided otherwise, OCSD accepts no liability for any expenses, losses, or action incurred or undertaken by Contractor as a result of work performed in anticipation of purchases of said services by OCSD.
2. **Compensation** Compensation to be paid by OCSD to Contractor for the Services provided under this Contract shall be a total amount not to exceed Four Hundred Thirty-two Thousand, Four Hundred Dollars (\$432,400.00).
3. **California Department of Industrial Relations (DIR) Registration and Record of Wages**
  - 3.1 To the extent Contractor’s employees and/or its subcontractors who will perform Work during the design and preconstruction phases of a construction contract or perform work under a maintenance contract for which Prevailing Wage Determinations have been issued by the DIR and as more specifically defined under Labor Code Section 1720 et seq, Contractor and its subcontractors shall comply with the registration requirements of Labor Code Section 1725.5. Pursuant to Labor Code Section 1771.4, the work is subject to compliance monitoring and enforcement by the DIR.
  - 3.2 The Contractor and its subcontractors shall maintain accurate payroll records and shall comply with all the provisions of Labor Code Section 1776, and shall submit payroll records to the Labor Commissioner pursuant to Labor Code 1771.4(a)(3). Penalties for non-compliance with the requirements of Section 1776 may be deducted from progress payments per Section 1776.
  - 3.3 Pursuant to Labor Code Section 1776, the Contractor and its subcontractors shall furnish a copy of all certified payroll records to OCSD and/or general public upon request, provided the public request is made through OCSD, the Division of Apprenticeship Standards or the Division of Labor Standards Enforcement of the Department of Industrial Relations.
  - 3.4 The Contractor and its subcontractors shall comply with the job site notices posting requirements established by the Labor Commissioner per Title 8, California Code of Regulation Section 16461(e).
4. **Payments and Invoicing**
  - 4.1 OCSD shall pay, net thirty (30) days, upon receipt and approval, by OCSD’s Project Manager or designee, of itemized invoices submitted for Milestones completed in accordance with Exhibit “A” and the Milestone-Schedule of Values for Payment table below.

OCSD, at its sole discretion, shall be the determining party as to whether the Milestones have been satisfactorily completed.

MILESTONES-SCHEDULE OF VALUES FOR PAYMENT				
1	Mobilization, initial progress payment for all fees, labor materials, and equipment required for mobilization, staging area			
	1A	Administrative Processing (Both Elevators)	(1st Invoice)	\$ 10,660.00
	1B	Field Survey (Both Elevators)	(2nd Invoice)	\$ 10,660.00
	1C	Plans/Submittal/Ordering (Both Elevators)	(3rd Invoice)	\$ 10,660.00
	1D	Mobilization - East RAS Elevator	(4th Invoice)	\$ 5,330.00
	1E	Mobilization - West RAS Elevator	(5th Invoice)	\$ 5,330.00
2	Labor, materials, equipment for completion of work, progress payments for each unit			\$ 341,120.00
3	Demobilization			
	3A	Demobilization East RAS Elevator		\$ 21,550.00
	3B	Demobilization West RAS Elevator		\$ 21,090.00
4	12-month warranty payment			\$ 6,000.00
TOTAL				\$ 432,400.00

4.2 Invoices shall be emailed by Contractor to OCSD Accounts Payable at [APStaff@OCSD.com](mailto:APStaff@OCSD.com) and "INVOICE" with the Purchase Order Number and "WAS/RAS Elevator Modernization" shall be referenced in the subject line.

**5. Audit Rights**

5.1 Contractor agrees that, during the term of this Contract and for a period of three (3) years after its termination, OCSD shall have access to and the right to examine any directly pertinent books, documents, and records of Contractor relating to the invoices submitted by Contractor pursuant to this Contract.

5.2 Contractor does not agree to any inspection, audit, or copy of any of Contractor's confidential, proprietary, or trade secret information, data, or documents including, without limitation, financials.

**6. Scope of Work** Subject to the terms of this Contract, Contractor shall perform the Services identified in Exhibit "A". Contractor shall perform said Services in accordance with generally accepted industry and professional standards.

**7. Modifications to Scope of Work**

7.1 Requests for modifications to the Scope of Work hereunder can be made by OCSD at any time. All modifications must be made in writing and signed by both Parties.

7.2 Subject to the provisions in this Acknowledgement regarding price adjustments, the Work is to be performed for a fixed price at the amount indicated in the Contract. Further, if Contractor is requested by OCSD to furnish any labor, service, or material that is outside of the mutually agreed upon scope of work of the Contract ("Out of Scope Work"), Contractor may, at its discretion, agree to perform such Out of Scope Work (1) subject to receipt of a written notice to proceed prior to commencement of any such Out of Scope Work; and (2) contingent upon receipt of a mutually agreed upon and executed change order.

8. **Contract Term** The Services provided under this Contract shall be completed within 413 calendar days from the effective date of the Notice to Proceed.
9. **Extensions** The term of this Contract may be extended only by written instrument signed by both Parties.
10. **Termination** The Contract may be terminated for cause only and provided that Contractor is first allowed ten (10) days to commence to cure the deficiency upon receipt by Contractor of written notice specifying in detail the deficiency. In the event the Contract is terminated through no fault of Contractor, OCSD agrees to pay for all material furnished or manufactured, and labor performed up to the date of the termination.
11. **Insurance**
- 11.1 Contractor will supply an insurance certificate evidencing the insurance carried by Contractor conditioned on the understanding that it represents full compliance with all insurance requirements applying to Contractor for the Work on this project. Contractor does not provide copies of its insurance policies, certified or otherwise, does not waive subrogation, and does not add others as additional insured. All limits and values related to coverage if any is provided to OCSD shall be actual values without qualifying language such as "at least", "not less than", "no less than", "minimum" or the like. Coverage, if any, will be on an occurrence basis and in accordance with the coverage limits outlined in the Contract (see attached Exhibit "C"). Renewal certificates will be provided during the term of the Contract. In lieu of naming parties as additional insured, such parties shall be named insured on an Owner's and Contractor's Protective (OCP) Liability policy provided by Contractor with a limit of \$2,000,000.
- 11.2 If the project is covered by an Owner/Contractor Controlled Insurance Program (OCIP/CCIP), Contractor agrees to participate provided it is at no cost to Contractor and subject to Contractor's review and express acceptance of the proposed program. In such instance, OCP is waived and any obligation of Contractor to add others as Additional Insurance shall be for off-site operations only.
- 11.3 Contractor shall not be required to comply with requirements from third party compliance vendors nor shall Contractor be responsible for any costs associated with same.
- 11.4 OCSD shall maintain "Builder's Risk" insurance upon the full value of the Work and material delivered to the job site, at no cost to Contractor.
- 11.5 Contractor does not waive its rights to immunity under worker's compensation, disability or employee benefits acts or laws.
12. **Indemnification and Hold Harmless Provision**
- 12.1 Contractor shall assume all responsibility for damages to property and/or injuries to persons, including accidental death, to the extent caused by Contractor's services under this Contract, or by its subcontractor(s) or by anyone directly or indirectly employed by Contractor, and whether such damage or injury shall accrue or be discovered before or after the termination of the Contract. Except as to the negligence of or willful misconduct of OCSD, Contractor shall indemnify, protect, defend and hold harmless OCSD, its elected and appointed officials, officers, agents and employees, from and against any and all claims, liabilities, damages or expenses of any nature, excluding consequential damages, including reasonable attorneys' fees: (a) for injury to or death of any person or damage to property or interference with the use of property, arising out of or in connection with Contractor's performance under the Contract, and/or (b) on account of use of any copyrighted or uncopyrighted material, composition, or process, or any patented or unpatented invention,

article or appliance, furnished or used under the Contract, and/or (c) on account of any goods and services provided under this Contract. This indemnification provision shall apply to the extent caused by to any negligent acts or omissions, willful misconduct, or negligent misconduct, whether active or passive, on the part of Contractor or anyone employed by or working under Contractor. To the maximum extent permitted by law, Contractor's duty to defend shall apply whether or not such claims, allegations, lawsuits, or proceedings have merit or are meritless, or which involve claims or allegations that any of the Parties to be defended were actively, passively, or concurrently negligent, or which otherwise assert that the Parties to be defended are responsible, in whole or in part, for any loss, damage, or injury. Contractor agrees to provide this defense immediately upon written notice from OCSD, and with well qualified, adequately insured, and experienced legal counsel acceptable to OCSD.

12.2 If defense costs are found by a judge, arbitrator or otherwise agreed to by all Parties in a settlement to be allocable to one or more of the Indemnitees, OCSD shall reimburse Contractor for that portion of defense costs attributable to the liability of the Indemnitees.

**13. Contractor Safety Standards**

13.1 Contractor agrees to abide by OCSD's safety policy as long as said policy is not in conflict with Contractor's safety policy(ies) or Contractor's agreement with the International Union of Elevator Constructors (IUEC).

13.2 OCSD agrees to provide Contractor with unrestricted ready and safe access to all areas of the building in which any Work is performed and to keep all Work areas free of excessive debris, waste, or hazardous materials. Further, OCSD shall prohibit others from interfering with the Work.

**14. Warranties** In addition to the warranties stated in Exhibit "A", the following shall apply:

14.1 Manufacturer's standard warranty shall apply. All manufacturer warranties shall commence on the date of acceptance by the OCSD Project Manager or designee of the work as complete.

14.2 Contractor's Warranty (Guarantee): If within a one (1) year period of completion of all work as specified in Exhibit "A", OCSD informs Contractor that any portion of the Services provided fails to meet the standards required under this Contract, Contractor shall, within the time agreed to by OCSD and Contractor, take all such actions as are necessary to correct or complete the noted deficiency(ies) at Contractor's sole expense.

**15. Bonds** In lieu of participation in any type of surety wrap-up or Subguard program, Contractor will provide surety bond(s) in the form provided by Contractor's surety at no cost to Contractor. If subcontractors are to be used by Contractor, Performance and Payment Bonds shall be provided.

**16. Liquidated Damages** In the event the Contractor fails to achieve completion of the work within the term of this Contract or achievement of any designated Milestones, after due allowance for extensions of time made in accordance with the Contract, if any, OCSD will sustain damage which would be extremely difficult and impracticable to ascertain. The Parties therefore agree that in each such event, Contractor will pay to OCSD the sum of Four Hundred Thirty-four Dollars (\$434.00) per day, as Liquidated Damages, and not as a penalty, for each and every calendar day during which completion of the work, as required in Exhibit "A", is so delayed. Contractor agrees to pay such Liquidated Damages and further agrees that OCSD may offset the amount of Liquidated Damages from any monies due or that may become due Contractor under this Contract. Contractor also agrees that to the extent the amount of Liquidated Damages exceeds any monies due to the Contractor under

this Contract, Contractor shall pay all such amounts to OCSD upon demand. If this provision is found for any reason to be void, invalid, or otherwise inoperative so as to disentitle OCSD from claiming Liquidated Damages, OCSD is entitled to claim against the Contractor damages at law for the Contractor's failure to complete the work during the term of this Contract.

17. **Force Majeure** Neither Party shall be liable for any loss, damage or delay nor be found to be in default or breach due to any cause beyond its reasonable control including, but not limited to, acts of God or nature; fire; explosion; theft; floods; water; weather; traffic conditions; epidemic, pandemic, quarantine or other local, state, or federal government action in responses thereto; sabotage; national emergency; act of terrorism; earthquake; riot; civil commotion; war; vandalism; national or local labor strikes, lockouts, other labor disputes; misuse, abuse, neglect, mischief, or work by others (collectively "Causes Beyond the Parties' Reasonable Control"). Both Parties shall be allowed a reasonable amount of additional time for the performance of the Work due to Causes Beyond the Parties' Reasonable Control. Contractor's ability to maintain scheduled job progress is further conditioned upon the timely furnishing to Contractor by OCSD of completed and code compliant hoistway(s) (wellways) and machine rooms, necessary approvals and power of proper characteristics for Contractor's uninterrupted use.
18. **Freight (F.O.B. Destination)** Contractor assumes full responsibility for all transportation, transportation scheduling, packing, handling, insurance, and other services associated with delivery of all products deemed necessary under this Contract.
19. **Familiarity with Work** By executing this Contract, Contractor warrants that: 1) it has investigated the work to be performed; 2) it has investigated the site of the work and is aware of all conditions there; and 3) it understands the facilities, difficulties and restrictions of the work under this Contract. Should Contractor discover any latent or unknown conditions materially differing from those inherent in the work or as represented by OCSD, it shall immediately inform OCSD of this and shall not proceed, except at Contractor's risk, until written instructions are received from OCSD.
20. **Software**
  - 20.1 All software supplied with OCSD's elevator or escalator equipment is licensed to OCSD or OCSD's successors but only for use with, and for the operation of the subject elevator or escalator equipment. Use of such software for any other purpose is prohibited. Work for Hire provision(s), if any, shall apply only to the extent the information, services, goods, or other items referenced in such provision(s) are specifically developed by the Contractor solely for OCSD's exclusive use only (and no other customer of the Contractor) and OCSD was expressly contemplated to be the exclusive owner of such information under a separate written agreement. Contractor will supply an owner's manual with instructions on how to operate and maintain the elevator or escalator equipment. Contractor will not supply any additional information such as internal, confidential, or proprietary information of Contractor including internal manuals, manufacturing drawings, or source code.
  - 20.2 Any counters, meters, tools, remote monitoring devices, communication devices, resident software or other service equipment ("Contractor Peripherals") which Contractor may use or install to deliver service under this Contract remains Contractor's property, solely for the use of Contractor's employees. Contractor Peripherals are not considered as part of the elevator or escalator equipment. If this Contract or subsequent maintenance service is terminated for any reason, Contractor shall be given access to the premises to remove the Contractor Peripherals at Contractor's expense. Contractor shall only be required to follow its own cyber security policies and procedures.

21. **Tools** OCSD shall not have the right to take possession of Contractor's tools, machinery or equipment. OCSD's right to take possession of materials is limited to materials that OCSD has paid in full for which Contractor has expressly agreed to the sale of such materials in writing.
22. **Regulatory Requirements** Contractor shall perform all work under this Contract in strict conformance with applicable Federal, State, and local regulatory requirements including, but not limited to, 40 CFR 122, 123, 124, 257, 258, 260, 261, and 503, Title 22, 23, and California Water Codes Division 2.
23. **Environmental Compliance** Contractor shall, at its own cost and expense, comply with all Federal, State, and local environmental laws, regulations, and policies which apply to the Contractor, its subcontractors, and the Services, including, but not limited to, all applicable Federal, State, and local air pollution control laws and regulations.
24. **Licenses, Permits, Ordinances and Regulations** Contractor represents and warrants to OCSD that it has obtained all licenses, permits, qualifications, and approvals of whatever nature that are legally required to engage in this work. Any and all fees required by Federal, State, County, City and/or municipal laws, codes and/or tariffs that pertain to the work performed under the terms of this Contract will be paid by Contractor.
25. **Applicable Laws and Regulations** Contractor shall comply with all applicable Federal, State, and local laws, rules, and regulations. Contractor also agrees to indemnify and hold harmless from any and all damages and liabilities assessed against OCSD as a result of Contractor's noncompliance therewith. Any permission required by law to be included herein shall be deemed included as a part of this Contract whether or not specifically referenced.
26. **Background Checks and Tests** Contractor supports OCSD's efforts to maintain a safe and productive work environment; however, Contractor's collective bargaining agreement with the IUEC prohibits Contractor from completing background checks, searches, or tests on Contractor employees in the IUEC bargaining unit. Therefore, Contractor cannot agree to authorize any party to complete criminal background checks, searches, or tests on any Contractor employees. Contractor will request IUEC represented employees furnishing Work for OCSD to agree to voluntarily submit to a criminal background check and agrees not to staff with employees who do not consent to same to the extent that OCSD requires background checks. OCSD agrees to pay any and all costs associated with obtaining criminal background checks conducted. Subject to the forgoing, Contractor will take appropriate action in the event that OCSD advises Contractor of any action by any of Contractor's employees that is contrary to the maintenance of a safe, healthy and productive workplace.
27. **Buy American** The equipment that Contractor will provide under this Contract is produced from components procured from a variety of sources located throughout the world. Therefore, Contractor cannot confirm compliance with the Buy American Act (or applicable domestic Sourcing Act). However, these components are selected or designed to meet applicable U.S. standards.
28. **Commercial Items Clarification** The components, equipment and services proposed by Contractor are commercial items as defined by the Federal Acquisition Regulations ("FAR") and the prices in any resulting contract and in any change proposal are based on Contractor's standard commercial accounting policies and practices which do not consider any special requirements of the government cost principles and do not meet the requirement of Part 31 of the FAR. Contractor agrees only to perform a contract for the sale of a

commercial item on a fixed price basis. In addition, Contractor will not agree to submit or certify to any cost pricing data nor does Contractor agree to any requirements to establish price reasonableness under FAR Part 15 or to meet any Cost Accounting Standards. In stating its position, Contractor refers to FAR Part 12 "Acquisition of Commercial Items." In addition, no federal government procurement regulations, such as FARs or DFARs shall apply to this Contract except those regulations expressly accepted in writing by Contractor.

29. **LEED** Contractor will make good faith efforts to satisfy LEED requirements, if any, but cannot guarantee compliance with any specific requirements or status certification.

30. **Minority/Women/Disabled Veteran-Owned Business Enterprise** The materials and components that comprise Contractor's products are procured from a variety of sources located throughout the world which allows us to provide Contractor's customers with high quality equipment at competitive prices, but limits Contractor's ability to meet certain percentages of M/W/DBE set aside goals. Contractor is committed to achieving diversity within Contractor's workforce and in Contractor's supply base, however, Contractor cannot commit to specific set aside targets in the Contract.

31. **Contractor's Employees Compensation**

31.1 **Davis-Bacon Act** – Contractor will pay and will require all subcontractors to pay all employees on said project a salary or wage at least equal to the prevailing rate of per diem wages as determined by the Secretary of Labor in accordance with the Davis-Bacon Act for each craft or type of worker needed to perform the Contract. The provisions of the Davis-Bacon Act shall apply only if the Contract is in excess of two thousand dollars (\$2,000.00) and when twenty-five percent (25%) or more of the Contract is funded by Federal assistance. If the aforesaid conditions are met, a copy of the provisions of the Davis-Bacon Act to be complied with are incorporated herein as a part of this Contract and referred to by reference.

31.2 **General Prevailing Rate** – OCSD has been advised by the State of California Director of Industrial Relations of its determination of the general prevailing rate of per diem wages and the general prevailing rate for legal holiday and overtime work in the locality in which the work is to be performed for each craft or type of work needed to execute this Contract, and copies of same are on file in the Engineering Department. The Contractor agrees that not less than said prevailing rates shall be paid to workers employed on this Contract as required by Labor Code Section 1774 of the State of California. Per California Labor Code 1773.2, OCSD will have on file copies of the prevailing rate of per diem wages at its principal office and at each project site, which shall be made available to any interested party upon request.

31.3 **Forfeiture For Violation** – Contractor shall, as a penalty to OCSD, forfeit fifty dollars (\$50.00) for each calendar day or portion thereof for each worker paid (either by the Contractor or any subcontractor under it) less than the prevailing rate of per diem wages as set by the Director of Industrial Relations, in accordance with Sections 1770-1780 of the California Labor Code for the work provided for in this Contract, all in accordance with Section 1775 of the Labor Code of the State of California.

31.4 **Apprentices** – Sections 1777.5, 1777.6, 1777.7 of the Labor Code of the State of California, regarding the employment of apprentices are applicable to this Contract and the Contractor shall comply therewith if the prime contract involves thirty thousand dollars (\$30,000.00) or more or twenty (20) working days or more; or if contracts of specialty contractors not bidding for work through the general or prime Contractor are two thousand dollars (\$2,000.00) or more or five (5) working days or more.



- 31.5 **Workday** – In the performance of this Contract, not more than eight (8) hours shall constitute a day's work, and the Contractor shall not require more than eight (8) hours of labor in a day from any person employed by it hereunder. Contractor shall conform to Article 3, Chapter 1, Part 7 (Section 1810 et seq.) of the Labor Code of the State of California and shall forfeit to OCSD as a penalty, the sum of twenty-five dollars (\$25.00) for each worker employed in the execution of this Contract by Contractor or any subcontractor for each calendar day during which any worker is required or permitted to labor more than eight (8) hours in any one (1) calendar day and forty (40) hours in any one (1) week in violation of said Article. Contractor shall keep an accurate record showing the name and actual hours worked each calendar day and each calendar week by each worker employed by Contractor in connection with the project.
- 31.6 **Record of Wages; Inspection** – Contractor agrees to maintain accurate payroll records showing the name, address, social security number, work classification, straight-time and overtime hours worked each day and week, and the actual per diem wages paid to each journeyman, apprentice, worker or other employee employed by it in connection with the project and agrees to require that each of its subcontractors do the same. All payroll records shall be certified as accurate by the applicable Contractor or subcontractor or its agent having authority over such matters. Contractor further agrees that its payroll records and those of its subcontractors shall be available to the employee or employee's representative, the Division of Labor Standards Enforcement, and the Division of Apprenticeship Standards and shall comply with all of the provisions of Labor Code Section 1776, in general. Penalties for non-compliance with the requirements of Section 1776 may be deducted from project payments per the requirements of Section 1776.
32. **South Coast Air Quality Management District's (SCAQMD) Requirements** It is Contractor's responsibility that all equipment furnished and installed be in accordance with the latest rules and regulations of the South Coast Air Quality Management District (SCAQMD). All Contract work practices, which may have associated emissions such as sandblasting, open field spray painting or demolition of asbestos containing components or structures, shall comply with the appropriate rules and regulations of the SCAQMD.
33. **Governing Law** This Contract shall be governed by and interpreted under the laws of the State of California and the Parties submit to jurisdiction in the County of Orange, in the event any action is brought in connection with this Contract or the performance thereof.
34. **Breach** The waiver of either Party of any breach or violation of, or default under, any provision of this Contract, shall not be deemed a continuing waiver by such Party of any other provision or of any subsequent breach or violation of this Contract or default thereunder. Any breach by Contractor to which OCSD does not object shall not operate as a waiver of OCSD's rights to seek remedies available to it for any subsequent breach.
35. **Remedies** In addition to other remedies available in law or equity, if the Contractor fails to make delivery of the goods or Services or repudiates its obligations under this Contract, or if OCSD rejects the goods or Services or revokes acceptance of the goods or Services, OCSD may (1) cancel the Contract; (2) recover whatever amount of the purchase price OCSD has paid, and/or (3) "cover" by purchasing, or contracting to purchase, substitute goods or Services for those due from Contractor. In the event OCSD elects to "cover" as described in (3), OCSD shall be entitled to recover from Contractor as damages the difference between the cost of the substitute goods or Services and the Contract price, together with any incidental or consequential damages.
36. **Dispute Resolution** Contractor will not be bound by arbitration but will always consider alternative dispute forms.

37. **Attorney's Fees** If any action at law or inequity or if any proceeding in the form of an Alternative Dispute Resolution (ADR) is necessary to enforce or interpret the terms of this Contract, the prevailing Party shall be entitled to reasonable attorney's fees, costs and necessary disbursements in addition to any other relief to which he may be entitled.
38. **Survival** The provisions of this Contract dealing with Payment, Warranty, Indemnity, and Forum for Enforcement, shall survive termination or expiration of this Contract.
39. **Severability** If any section, subsection, or provision of this Contract, or any agreement or instrument contemplated hereby, or the application of such section, subsection, or provision is held invalid, the remainder of this Contract or instrument in the application of such section, subsection or provision to persons or circumstances other than those to which it is held invalid, shall not be affected thereby, unless the effect of such invalidity shall be to substantially frustrate the expectations of the Parties.
40. **Damage to OCSD's Property** Any of OCSD's property damaged by Contractor, any subcontractors or by the personnel of either will be subject to repair or replacement by Contractor at no cost to OCSD.
41. **Disclosure** Contractor agrees not to disclose, to any third party, data or information generated from this project without the prior written consent from OCSD.
42. **Independent Contractor** The legal relationship between the Parties hereto is that of an independent contractor, and nothing herein shall be deemed to make Contractor an OCSD employee. During the performance of this Contract, Contractor and its officers, employees, and agents shall act in an independent capacity and shall not act as OCSD's officers, employees, or agents. Contractor and its officers, employees, and agents shall obtain no rights to any benefits which accrue to OCSD's employees.
43. **Limitations upon Subcontracting and Assignment** Contractor shall not delegate any duties nor assign any rights under this Contract without the prior written consent of OCSD. Any such attempted delegation or assignment shall be void.
44. **Third Party Rights** Nothing in this Contract shall be construed to give any rights or benefits to anyone other than OCSD and Contractor.
45. **Non-Liability of OCSD Officers and Employees** No officer or employee of OCSD shall be personally liable to Contractor, or any successor-in-interest, in the event of any default or breach by OCSD or for any amount which may become due to Contractor or to its successor, or for breach of any obligation for the terms of this Contract.
46. **Read and Understood** By signing this Contract, Contractor represents that he has read and understood the terms and conditions of the Contract.
47. **Authority to Execute** The persons executing this Contract on behalf of the Parties warrant that they are duly authorized to execute this Contract and that by executing this Contract, the Parties are formally bound.
48. **Entire Contract** This Supplemental Service Contract, together with the Exhibits hereto, constitutes the entire agreement of the Parties and supersedes all prior written or oral and all contemporaneous oral agreements, understandings, and negotiations between the Parties with respect to the subject matter hereof.

**49. Notices** All notices under this Contract must be in writing. Written notice shall be delivered by personal service or sent by registered or certified mail, postage prepaid, return receipt requested, or by any other overnight delivery service which delivers to the noticed destination and provides proof of delivery to the sender. Rejection or other refusal to accept or the inability to deliver because of changed address for which no notice was given as provided hereunder shall be deemed to be receipt of the notice, demand or request sent. All notices shall be effective when first received at the following addresses:

OCSD: B. Cori Voss, Senior Buyer  
Orange County Sanitation District  
10844 Ellis Avenue  
Fountain Valley, CA 92708

Contractor: Valerie Huerta  
Modernization Sales, Otis Americas  
Otis Elevator Company  
711 E. Ball Road, Suite 200  
Anaheim, CA 92805

Each Party shall provide the other Party written notice of any change in address as soon as practicable.

**IN WITNESS WHEREOF**, intending to be legally bound, the Parties hereto have caused this Contract to be signed by the duly authorized representatives.

**ORANGE COUNTY SANITATION DISTRICT**

Dated: \_\_\_\_\_ By: \_\_\_\_\_  
David John Shawver  
Chair, Board of Directors

Dated: \_\_\_\_\_ By: \_\_\_\_\_  
Kelly A. Lore  
Clerk of the Board

Dated: \_\_\_\_\_ By: \_\_\_\_\_  
Ruth Zintzun  
Purchasing & Contracts Manager

**OTIS ELEVATOR COMPANY**

Dated: \_\_\_\_\_ By: \_\_\_\_\_

\_\_\_\_\_  
Print Name and Title of Officer