

# **Attachment 1**

## **ATTACHMENT 1**

### **Construction Agreement**



**COUNTY OF SANTA BARBARA**  
**AGREEMENT FOR:**  
**General Services Project No. 21009**  
County of Santa Barbara  
Administration Building Elevator Repair  
105 E Anapamu St  
Santa Barbara, CA 93101  
BC: \_\_\_\_\_ - \_\_\_\_\_

THIS AGREEMENT ("Agreement") is made by and between the County of Santa Barbara, a political subdivision of the State of California ("COUNTY"), and **Urban Elevator Services CA LLC** ("CONTRACTOR"), for the completion of the work identified herein ("Work") in connection with General Services Project No. 21009 ("Project"), on the following terms, conditions and provisions:

**1. CONTRACT:** This Agreement incorporates by reference all of the General and Special Conditions and Specifications provided by COUNTY in connection with the Project ("Project Documents"), and, to the extent consistent with this Agreement and the Project Documents and the RFP (defined below), the proposal executed and submitted by the CONTRACTOR in response to the County's Request For Proposals ("RFP") for the Project ("Proposal"). CONTRACTOR acknowledges receipt of all Project Documents. This Agreement, together with the Project Documents, the RFP, the Proposal, any Notice to Contractors in connection with the Project, the Project Bid Bond, Faithful Performance Bond, and Payment Bond, are referred to herein, collectively, as the "Contract" or "Contract Documents." Copies of all Contract Documents are on file in the Department of General Services Office of the COUNTY, and have been and will be made available to the CONTRACTOR during the term of this Agreement. All capitalized terms used but not defined herein shall have the respective meaning ascribed to such terms in the RFP and the Project Documents.

**2. WORK:** CONTRACTOR shall, at CONTRACTOR's own cost and expense, to furnish all of the Work and all equipment and materials necessary to perform and complete the Work as set forth in the Contract Documents, in a good and workmanlike manner to the satisfaction of the Director of General Services of the COUNTY, all in strict accordance with the Specifications and the Contract Documents.

**3. EXCAVATIONS:** Before any pavement resurfacing, displacement or excavation of the ground that may be required by any performance of Work under this Agreement, the CONTRACTOR shall obtain an inquiry identification number by calling Underground Service Alert (USA) 1 (800) 422-4133, or by such other means as may be required, shall comply with all requirements of Government Code Sections 4215 through 4217 regarding any such pavement resurfacing, displacement or excavation, including the payment of any fees required, and shall facilitate performance by the COUNTY of any obligation required of the COUNTY under said Government Code Sections. There shall be no performance under this Agreement by either party prior to (i) compliance with the foregoing provisions of this Section 3, and (ii) CONTRACTOR notifies the County Representative in writing of such compliance.

**4. COUNTY REPRESENTATIVE:** The County Representative referred to in the Contract Documents is Elizabeth Villatoro, Sr. Project Manager.

**5. PAYMENT:** As full compensation for furnishing all labor, supervision, overhead, materials and equipment, and for completion all of the Work contemplated in the Contract Documents, and subject to adjustments and liquidated

damages, if any, as provided in the Contract Documents, the base amount to be paid to the CONTRACTOR for satisfactory completion of all requirements of the Contractor under this Agreement is and shall be Two Hundred Twenty Seven Thousand Eight Hundred Forty Five DOLLARS (\$227,845.00), to be paid as provided in the Contract Documents. The CONTRACTOR assumes and shall provide against any and all loss or damage arising out of the nature of the Work undertaken, from the action of the elements, from any unforeseen difficulties or obstructions which may arise or be encountered in the performance of the Work until its acceptance by the COUNTY, and assumes any and all expenses incurred by or in consequence of suspension or discontinuance of the Work, for well and faithfully completing the entirety of the Work in the manner contemplated by and in accordance with the requirements set forth in the Contract and the directions of the County Representative.

6. **RIGHT TO AUDIT**: CONTRACTOR shall maintain and make available all books, papers, records, detail costs, estimates, claims, and accounts, including payment, property, payroll, personnel, subcontractors, sub-subcontractors and financial records related to or which arise in connection with the Contract (collectively, the Project Records). The form of such record keeping shall be subject to approval by COUNTY. Such Project Records shall be made available for examination by COUNTY or COUNTY'S representative during normal business hours, and shall be retained at CONTRACTOR'S principal place of business in California for audit during normal business hours at such place for four (4) years after recording of the Notice of Completion for the Project. CONTRACTOR shall provide an office in which COUNTY and COUNTY'S representative may conduct such audit(s).

The COUNTY shall have the right to audit CONTRACTOR'S Project Records. All Project Records shall be made available in a form satisfactory to the Santa Barbara County Auditor-Controller.

7. **EXTRA WORK**: Extra work, materials, resolution of disputes, corrections, and/or changes to the specifications as are required for the proper completion of the Work contemplated in the Contract Documents may be effected or authorized in writing and agreement made of compensation at the same rate per unit (or at a corresponding rate for work that is different from that provided for in the Contract Documents) by the County Representative, if compensation is not in excess of 10% of the original base Agreement amount, or \$25,000, or \$25,000 + 5% of the amount of the bid in excess of \$250,000. Compensation in such other equitable amount as is appropriate for the requirements of the COUNTY may be authorized by resolution or minute order of the Santa Barbara County Board of Supervisors. The County Representative may agree upon appropriate additional time to be allowed for performance of the Work as required for such extra work, materials, resolution or changes.

8. **COMPLIANCE WITH LAW, AMENDMENTS**: CONTRACTOR shall keep fully informed of, and shall at all times during the term of this Agreement ensure the performance of the Work in compliance with, all laws, ordinances and regulations which do or may affect the conduct of the Work, the materials used therein, or persons engaged or employed in the performance of the Work, and all such orders of bodies and tribunals having any jurisdiction over same. If it be found that the Special Provisions or Standard Specifications for the work conflict with any such law, ordinance or regulation, the CONTRACTOR shall immediately report same to the County Representative in writing. CONTRACTOR shall at all times observe and comply with, and shall cause all CONTRACTOR's agents, subcontractors, and employees to observe and comply with all such laws, ordinances, regulations and decrees as the same now exists or may be hereafter amended or enacted, and all superseding provisions thereof. CONTRACTOR acknowledges and agreed to comply with, particularly, the provisions of Sections 9364 and Sections 9550 and 9566, inclusive, of the Civil Code of California. CONTRACTOR shall protect and indemnify the County of Santa Barbara, the Board of Supervisors, the Director of General Services, and all officers, agents, and employees of the COUNTY, against any claims or liability arising from or based on the violation of any such law, ordinance, regulation or decree, whether by CONTRACTOR, or a subcontractor, agent or employee.

**9. PAYMENTS NOT ACCEPTANCE:** No certificate given or payments made under this Contract, except the final payment made in accordance with the provisions of the Contract Documents, shall be evidence of the performance of this Contract, either wholly or in part, against any claim upon CONTRACTOR. Final payment for the work performed under this Contract shall not be made until the lapse of thirty (30) days after the Notice of Completion of said work has been filed for record, and no payment shall be construed to be acceptance of any defective work or improper materials. CONTRACTOR agrees that the payment for final quantities due under this Contract and the payment of amounts due for any Work in accordance with any amendments of this Contract, shall release the County of Santa Barbara from any and all claims or liabilities on account of Work performed under this Contract or any amendments thereof. In addition to guarantees required elsewhere, CONTRACTOR shall and does hereby guarantee all workmanship and material to be free of defects and fit for the purposes intended for a period of one year from and after both the date of acceptance of the Work and the recordation of the Notice of Completion by the COUNTY, and CONTRACTOR shall repair or replace any or all Work and material, together with any other portions of the Work which may be displaced in so doing, that in the opinion of the County Representative, is or becomes defective during the period of said guarantee without expense whatsoever to the COUNTY.

**10. PREVAILING WAGE RATES:** Rates of wages, including overtime, holiday and Sunday rates provided for the Work are subject to the effect of the California Labor Code, Sections 1770 et. seq. Executive Orders of the President of the United States No. 9240, dated September 9, 1942, and No. 9250, dated October 3, 1942, and to any modifications thereof and to any and all lawful orders of the President or any authorized Federal Officer or agency, insofar as the same may be applicable to this Contract.

No contractor or subcontractor may be listed on a bid proposal for a public works project (submitted on or after March 1, 2015) unless registered with the Department of Industrial Relations pursuant to Labor Code section 1725.5 [with limited exceptions from this requirement for bid purposes only under Labor Code section 1771.1(a)]. No contractor or subcontractor may be awarded a contract for public work on a public works project (awarded on or after April 1, 2015) unless registered with the Department of Industrial Relations pursuant to Labor Code section 1725.5. This Project is subject to compliance monitoring and enforcement by the Department of Industrial Relations.

**11. CONTRACT DOCUMENTS ACKNOWLEDGED:** CONTRACTOR hereby declares that CONTRACTOR has read the "Contract Documents" pertaining to the work to be accomplished hereunder, has carefully examined the plans and detail drawings of the Work to be performed, and fully understands the intent and meaning of the same.

**12. TIME FOR COMMENCEMENT, COMPLETION:** The Work to be performed under this Agreement shall be completed within 30 calendar days after execution of this Agreement. As soon as practicable after the Contract has been executed by both the CONTRACTOR and the COUNTY, a Notice to Proceed will be issued by the County Representative stating the starting date of the Contract time. The CONTRACTOR shall begin work within fifteen (15) calendar days after receiving the Notice to Proceed, unless otherwise provided. Attention is directed to the provisions of this Agreement pertaining to Liquidated Damages for failure to complete the Work within the allowed time.

**13. WORKERS' COMPENSATION INSURANCE:** CONTRACTOR certifies CONTRACTOR's knowledge of the provisions of Section 3700 of the Labor Code, which requires every employer to be insured against liability for Workers' Compensation or to undertake self-insurance in accordance with the provisions of that Code. CONTRACTOR shall comply with such provisions before commencing the performance of the Work under this Contract.

**14. PROGRESS PAYMENT NO WAIVER FOR DELAY:** Any progress payment made after the scheduled completion date of the Work hereunder shall not constitute a waiver of any liquidated damages heretofore agreed upon as part of this Contract.

**15. GUARANTEE BONDS:** Before any performance under this Agreement, the CONTRACTOR shall provide the security required by statute for the payment of all workers and suppliers, and security for faithful performance of all terms and conditions of this Agreement, in an amount and form approved by the COUNTY. Both securities shall contain provisions which automatically increase amounts thereof and/or time of completion or both for all change orders, extensions and additions to the work provided pursuant to this Agreement.

**16. NON-DISCRIMINATION:** The CONTRACTOR acknowledges that this Agreement is subject to the provisions of Article XIII of Chapter 2 of the Santa Barbara County Code, providing against discrimination in employment. The CONTRACTOR agrees to perform all requirements of a contractor under the provisions of said Article and to pay all costs occasioned to the COUNTY by any noncompliance by the CONTRACTOR.

**17. DISPUTES:** Should any dispute arise respecting the construction or meaning of any of the plans or specifications affecting the Work or respecting the true value of any extra work, or Work omitted, such dispute shall be resolved by Scott Elevator Consultants a division of HKA Elevator Consulting, Inc. (Consultant) and the County of Santa Barbara (Owner), whose decision shall be final and binding upon the parties to such dispute. If, after the decision of the Consultant and the Owner as provided herein, claims (as defined in Public Contracts Code Section 20104) under this Contract are filed by CONTRACTOR against COUNTY and those claims are in the aggregate amount of \$375,000 or less, said claims shall be resolved pursuant to Public Contracts Code Sections 20104 through 20104.8, inclusive.

**18. SUBSTITUTION OF MATERIALS, SUBSTITUTION OF CONTRACTORS:** The County Representative is authorized to act on behalf of the awarding authority in any matters requiring consent, notice or hearing in order to substitute materials or equipment specified or to substitute subcontractors.

**19. SURVIVAL:** All provisions of this Contract which by their nature are intended to survive the termination or expiration of this Agreement shall survive such termination or expiration.

**IN WITNESS WHEREOF**, the parties hereto have executed the Agreement to be effective as of the first date fully executed by all the parties hereto.

**COUNTY**

County of Santa Barbara

By: \_\_\_\_\_  
JOAN HARTMANN, CHAIR  
BOARD OF SUPERVISORS

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

**ATTEST:**

MONA MIYASATO,  
COUNTY EXECUTIVE OFFICER  
CLERK OF THE BOARD

By: \_\_\_\_\_  
Deputy Clerk of the Board

**CONTRACTOR**

Urban Elevator Services CA  
License #C-11, 1078335

By: \_\_\_\_\_  
DocuSigned by:  
Rene Hertsberg  
C3CC4405400C405...  
AUTHORIZED REPRESENTATIVE

Name: \_\_\_\_\_  
Rene Hertsberg

Title: \_\_\_\_\_  
Co-CEO & General Counsel

**APPROVED AS TO FORM:**

RACHAL VAN MULLEM,  
COUNTY COUNSEL

By: \_\_\_\_\_  
DocuSigned by:  
Lauren Wideman  
8F464D822C84458...  
Deputy County Counsel

**APPROVED AS TO ACCOUNTING FORM:**

BETSY SCHAFFER, CPA, CPFO  
AUDITOR-CONTROLLER

By: \_\_\_\_\_  
DocuSigned by:  
C. Schaffer  
A99ED6BD71D04FB...  
Deputy Auditor-Controller

**APPROVED AS TO FORM:**

GREG MILLIGAN  
RISK MANAGER

By: \_\_\_\_\_  
DocuSigned by:  
Greg Milligan  
53A8AAB798BA4D7...  
Risk Manager

**RECOMMENDED FOR APPROVAL**

JANETTE D. PELL, DIRECTOR  
GENERAL SERVICES DEPARTMENT

By: \_\_\_\_\_  
DocuSigned by:  
Janette D. Pell  
1EBA9BD673A445E...  
Department Head