

State of Alabama     )  
County of Baldwin    )

**CONTRACT FOR PROFESSIONAL AND CONSTRUCTION SERVICES**

This Contract for **Professional and Construction** Services is made and entered into by and between the County of Baldwin (hereinafter called "COUNTY") acting by and through its governing body, the Baldwin County Commission and Otis Elevator Company, (hereinafter referred to as "PROVIDER").

**WITNESSETH:**

**Whereas**, at its regular meeting on Tuesday, April 17, 2018, the Commission authorized staff to solicit bids for the Provision of Elevator Maintenance Services; and

**Whereas**, staff solicited bids with Otis Elevator Company, presenting the lowest bid to the County.

**NOW, THEREFORE**, in consideration of the premises and the mutual covenants herein contained, the sufficiency of which being hereby acknowledged, PROVIDER and COUNTY do hereby agree as follows:

**I. Definitions.** The following terms shall have the following meanings:

- A. COUNTY:           Baldwin County, Alabama
- B. COMMISSION:     Baldwin County Commission
- C. PROVIDER:        Otis Elevator Company

**II. Obligations Generally.** The COUNTY hereby retains, and the PROVIDER agrees to perform for the COUNTY, those professional and construction services as hereinafter set forth. This document shall serve as the binding contract for the services of PROVIDER. PROVIDER shall immediately commence performance of the services outlined herein upon full execution of this Contract. All work shall be commenced and completed in a timely manner as, and at the times, herein set out.

**III. Recitals Included.** The above recitals and statements are incorporated as part of this Contract, and shall have the effect and enforceability as all other provisions herein.

**IV. Professional Qualifications.** For the purpose of this Contract, the PROVIDER represents and warrants to the COUNTY that it possesses the professional, technical, and administrative personnel with the specific experience and training necessary to provide the professional services required herein.

**V. No Prohibited Exclusive Franchise.** The COUNTY neither perceives nor intends, by this Contract, a granting of an exclusive franchise or violation of Art. I, Section 22 of the Alabama Constitution.

**VI. Representation/Warranty of Certifications, Etc.** PROVIDER represents and warrants that PROVIDER is presently certified, licensed and otherwise permitted under all necessary and applicable laws and regulations to perform the services herein, and that PROVIDER shall renew, maintain, and otherwise ensure that all such certifications, licenses, and permits are current and valid, without interruption, for and through completion of the services. The representation and warranty aforesaid is a material inducement to the COUNTY in entering this Contract, and the parties agree that the breach thereof shall be deemed material at the County's option.

**VII. Legal Compliance.** PROVIDER shall at all times comply with all applicable Federal, State, local and municipal laws and regulations.

**VIII. Independent Contractor.** PROVIDER acknowledges that it is an independent contractor, and PROVIDER shall at all times remain as such in performing the services under this Contract. PROVIDER is not an employee, servant, partner, or agent of the COUNTY and has no authority, whether express or implied, to contract for or bind the COUNTY in any manner. The parties agree that PROVIDER shall be solely responsible for and shall have full and unqualified control over developing and implementing its own means and methods, as it deems necessary and appropriate in providing the aforementioned services, and that the COUNTY's interests herein are expressly limited to the results of said services. PROVIDER is not entitled to unemployment insurance benefits, and PROVIDER is responsible for and obligated to pay any and all federal and state income tax on any monies paid pursuant to this Contract.

**IX. No Agency Created.** It is neither the express nor the implied intent of PROVIDER or COUNTY to create an agency relationship pursuant to this Contract. Therefore, the PROVIDER does not in any manner act on behalf of COUNTY and the creation of such a relationship is prohibited and void.

**X. Unenforceable Provisions.** If any one or more of the provisions contained herein shall, for any reason, be held to be invalid, illegal or unenforceable in any respect, then such provision or provisions shall be deemed severable from the remaining provisions hereof, and such invalidity, illegality or unenforceability shall not affect any other provision hereof. This Contract shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein.

**XI. Entire Agreement.** This Contract represents the entire and integrated agreement between COUNTY and PROVIDER and supersedes all prior negotiations, representations, or agreements, either written or oral. This Contract may be amended only by written instrument signed by all parties.

**XII. Failure to Strictly Enforce Performance.** The failure of the COUNTY to insist upon the strict performance of any of the terms, covenants, agreements and conditions of this Contract shall not constitute, and shall never be asserted by PROVIDER as constituting, a default or be construed as a waiver or relinquishment of the right of the COUNTY to thereafter enforce any such term, covenant, agreement, or condition, but the same shall continue in full force and effect.

**XIII. Assignment.** This Contract or any interest herein shall not be assigned transferred or otherwise encumbered by PROVIDER without the prior written consent of the COUNTY, which may be withheld or granted in the sole discretion of the COUNTY.

**XIV. Ownership of Documents/Work.** The COUNTY shall be the owner of all copyright or other intellectual property rights in reports, documents and deliverables produced and paid for under this Contract, and to the extent permitted by Alabama law, any such material may be reproduced and reused at the discretion of the COUNTY without payment of further consideration. PROVIDER shall not transfer, disclose, or otherwise use such information for any purpose other than in performance of the services hereunder, without the COUNTY's prior written consent, which may be withheld or granted in the sole discretion of the COUNTY.

**XV. Notice.** Notice required herein shall be in writing, unless otherwise allowed, and said notice shall be deemed effective when received at the following addresses:

PROVIDER: Otis Elevator Company  
5625 Dixie Drive, Suite 4  
Pensacola, FL 32503  
ATTN: Greg Andrews

COUNTY: Baldwin County Commission  
c/o Chairman  
312 Courthouse Square  
Suite 12  
Bay Minette, AL 36507

**XVI. Services to be Rendered.** PROVIDER is retained by the COUNTY as a professionally-qualified **contractor**. The general scope of work for the services shall include all the terms and Conditions of **“Competitive Bid #WG18-24”**, the same being expressly incorporated herein by reference, and without limitation will encompass:

**“All provision and conditions and/or specifications listed/stated in Competitive Bid #WG18-24 named, Provision of Elevator Maintenance Services for the Baldwin County Commission”.**

A. PROVIDER will provide ongoing communications with COUNTY regarding this service, including updates, emails and etc. as requested. Additionally, PROVIDER will meet with COUNTY as needed or requested.

B. PROVIDER is responsible for the professional quality, technical accuracy, timely completion and coordination of all services furnished by or in relation to this Contract.

C. PROVIDER represents and warrants that its services shall be performed within the limits and standards provided by the COUNTY, in a manner consistent with the level of care and skill ordinarily exercised by similar providers under similar circumstances at the time the services are performed.

**XVII. General Responsibilities of the COUNTY.**

A. The COUNTY shall provide reasonable notice to PROVIDER whenever the COUNTY actually observes or otherwise actually becomes aware of any development that affects the scope or time of PROVIDER’s services hereunder or any defect or nonconformance in the work of PROVIDER.

B. The COUNTY shall pay to PROVIDER the compensation as, and subject to the terms set out below.

**XVIII. Termination of Services.** The COUNTY may terminate this contract, with or without cause or reason, by giving thirty (30) days written notice of such to the PROVIDER. Upon receipt of such notices, PROVIDER shall discontinue its work to the extent specified in the notice.

In the event of termination, the COUNTY shall pay PROVIDER for all services satisfactorily rendered, and for any expenses deemed by COUNTY to be a reimbursable expense incurred pursuant to this Contract and prior to the date of termination.

**XIX. Compensation Limited.** The compensation to be paid to the PROVIDER shall be the full compensation for all work performed by PROVIDER under this Contract. Any and all additional expenditures or expenses of PROVIDER, not listed in full within this Contract, shall not be considered as a part of this Contract and shall not be demanded by PROVIDER or paid by COUNTY.

**XX. Direct Expenses.** Compensation to PROVIDER for work shall be paid as listed on "**ATTACHMENT A & B**". Said compensation shall be all inclusive, including without limitation, reimbursement of all cost, incidentals and operating expense associated with those directly engaged in performance of the requested services.

**XXI. Method of Payment.** PROVIDER shall submit invoices to the COUNTY for payment for work performed. Such invoice shall be accompanied by a detailed account of compensation to be paid PROVIDER.

Payment shall be made by the COUNTY within thirty (30) days of the approval of the invoice submitted by the PROVIDER. The COUNTY agrees to review and approve invoices submitted for payment in a timely manner.

**XXII. Effective and Termination Dates.** This Contract shall be effective and commence immediately upon the same date as its full execution, and shall terminate upon the expiration of twelve-four (24) months or upon written notification thereof received by either party within the required thirty (30) day period. [Nothing herein stated shall prohibit the parties from otherwise terminating this Contract according to the provisions herein.]

**XXIII. Force Majeure.** The Parties hereto shall incur no liability to the other if performance becomes impossible or impracticable by reason of an event or effect that the parties could neither have anticipated nor controlled. This allowance shall include both an act of nature and acts of third parties. Any

costs that would otherwise be incurred and/or necessitated by the provisions herein shall be alleviated for either party by such event or effect.

**XXIV. Indemnification.** Provider shall indemnify, defend and hold County, and its Commissioners, affiliates, employees, agents, and representatives (collectively "County") harmless from and against any and all claims, demands, liabilities, damages, losses, judgments, costs, and expenses including, without limitations, attorneys' fees, and costs, for any and all personal injury (including death) and property damage of any kind or nature whatsoever, incurred by, asserted against, or imposed upon County, as a result of or in any manner related to provision of services hereunder, or any act or omission, by Provider. Contractor shall provide the COUNTY with proof of general liability coverage including the COUNTY as an additional insured. This indemnification shall survive the expiration or termination of this Contract.

**XXV. Number of Originals.** This Contract shall be executed with three (3) originals, each of which are equally valid as an original.

**XXVI. Governing Law:** This Contract in all respects, including without limitation its formation, validity, construction, enforceability and available remedies, shall be governed by the laws of the State of Alabama, without regard to Alabama conflict of law principles.

**XXVII: Insurance:** Prior to performing services pursuant to this Contract, Provider shall carry, with insurers satisfactory to County, throughout the term of hereof, Auto Liability Insurance, including owned, hired and non-owned vehicles, with limits of not less than \$1,000,000, combined single limit, for both bodily injury liability and property damage liability each occurrence; Commercial General Liability Insurance, including all contractual liability hereunder, with limits not less than \$1,000,000, combined single limit, for both bodily injury liability and property damage liability each occurrence; and Worker's Compensation Insurance, meeting the statutory limits of the State of Alabama and Employer's Liability Insurance fully covering all employees and supervisors participating in the work at the subject property site. All liability insurance shall name the County as an additional insured. Prior to commencing operations hereunder, a Certificate of Insurance evidencing such coverage, satisfactory to County, shall be furnished to County, which shall specifically state that such insurance shall provide for at least ten (10) days' notice to County in the event of cancellation, termination or any change in such insurance policies. The workers compensation certificate shall bear an endorsement clearly evidencing a waiver of the right of subrogation against County and County Representatives. Should Provider fail to furnish current evidence upon demand of any insurance required hereunder, or in the event of cancellation, termination or change in any such

insurance, County may, at its option, suspend this Contract until insurance is obtained, terminate this Contract immediately without further action, or hold Provider in material default and pursue any and all remedies available.

IN WITNESS WHEREOF, the parties hereto have executed this contract on the last day of execution by the COUNTY as written below.

COUNTY

ATTEST:

\_\_\_\_\_/\_\_\_\_\_  
FRANK BURT, JR., Chairman /Date

\_\_\_\_\_/\_\_\_\_\_  
RONALD J. CINK /Date  
County Administrator/Budget Director

State of Alabama )

County of Baldwin )

I, \_\_\_\_\_, a Notary Public in and for said County, in said State, hereby certify that, Frank Burt, Jr., whose name as Chairman of Baldwin County Commission, and Ronald J. Cink, whose name as County Administrator/Budget Director, are known to me, acknowledged before me on this day that, being informed of the contents of the Contract for Professional and Construction Services, they, as such officers and with full authority, executed same knowingly and with full authority to do so on behalf of said Commission.

GIVEN under my hand and seal on this the \_\_\_\_\_ day of \_\_\_\_\_, 2018.

\_\_\_\_\_  
Notary Public  
My Commission Expires

**SIGNATURE PAGE AND NOTARY PAGE TO FOLLOW**

PROVIDER:

**Otis Elevator Company**

\_\_\_\_\_/\_\_\_\_\_  
By \_\_\_\_\_/Date  
Its \_\_\_\_\_

State of \_\_\_\_\_)

County of \_\_\_\_\_)

I, \_\_\_\_\_, Notary Public in and for said County and State, hereby certify that \_\_\_\_\_ as \_\_\_\_\_ of Otis Elevator Company, whose name is signed to the foregoing in that capacity, and who is known to me, acknowledged before me on this day that, being informed of the contents of the foregoing, he executed the same voluntarily on the day the same bears date for and as an act of said Otis Elevator Company.

GIVEN under my hand and seal on this the \_\_\_\_\_ day of \_\_\_\_\_, 2018.

\_\_\_\_\_  
Notary Public  
My Commission Expires

**“ATTACHMENT A”**

**BID #WG18-24 RESPONSE FORM**

Provision of Elevator Maintenance Services

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Date: 5-8-2018

Out of State  Yes or  No If yes, 13695  
Registration Number

Company Name: OTIS Elevator Company

Alabama General Contractors License Number 13695

Address: 5625 Dixie Dr. Suite 4  
Pensacola FL 32503

Company Rep Greg Andrews Greg Andrews  
Greg Andrews  
(Rep. Name Typed or Printed)

Position: Sr. Account Manager

Phone: 850-473-1244 Ex 16

Fax: 850-473-1637

Email: greg.andrews@otis.com

Financing through another agency beside yourself  Yes or  No

If yes, must attach a copy of the financing agreement and all conditions to this response from.

N/A  
Financing Agency Authorized Signature

**The Alabama General Contractors License Number must be listed on the outside of the sealed envelope.**

**All exceptions must be listed and attached to the bid response form.**

**BID #WG18-24 RESPONSE FORM**

Provision of Elevator Maintenance Services

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- 1) Baldwin County Robertsdale Coliseum - 19477 Fairground Road - Robertsdale, AL 36567  
Otis 2500 lb. Hydraulic – Jurisdiction #ALE 33418  
Amount Bid: \$ 4,100.00 per month
- 2) Baldwin County Central Annex II - 22070 Highway 59 - Robertsdale, AL 36567  
West Elevator – Dover 3000 lb. Hydraulic – Jurisdiction #ALE019895  
East Elevator - Dover 3500 lb. Hydraulic – Jurisdiction #ALE019896  
Amount Bid: \$ 250.00 per month
- 3) Baldwin County Satellite Courthouse - 1100 Fairhope Avenue - Fairhope, AL 36532  
Thyssenkrupp 2500 lb. Hydraulic – Jurisdiction #ALE 050901  
Amount Bid: \$ 100.00 per month
- 4) Baldwin County Annex IV (CIS Building) – 105 West 3<sup>rd</sup> Street – Bay Minette, AL 36507  
Kone Microprocessor Traction 2500 lb. Elevator – Jurisdiction #ALE021346  
Amount Bid: \$ 210.00 per month
- 5) Baldwin County Emergency Management – 23100 McAuliffe Dr., Robertsdale, AL 36567  
Thyssenkrupp 2500 lb. Hydraulic – Jurisdiction #ALE033231  
Amount Bid: \$ 100.00 per month
- 6) Baldwin County Courthouse – 1 Courthouse Square, Bay Minette, AL 36507  
Dover 2500 lb. Hydraulic – Jurisdiction #ALE 033568  
Amount Bid: \$ 100.00 per month
- 7) Wheel Chair Lift 500 lb. – Jurisdiction #ALE 033200  
Amount Bid: \$ 80.00 per month
- 8) Baldwin County Corrections Center – 200 Hand Avenue, Bay Minette, AL 36507  
Dover 2500 lb. Hydraulic (6 stop) – Jurisdiction #ALE033747  
(Overtime service calls should be included for the six (6) stop elevator, for equipment related issues only,  
located in the Baldwin County Corrections Center)  
Amount Bid: \$ 150.00 per month
- 9) Baldwin County Corrections Center – 200 Hand Avenue, Bay Minette, AL 36507  
Dover 3500 lb. Hydraulic (2 stop) – Jurisdiction #ALE033748  
Amount Bid: \$ 100.00 per month
- 10) Baldwin County Sheriff's Investigation Office – 18126 Co. Rd. 54, Robertsdale, AL 36567  
Dover 2000 lb. Hydraulic – Jurisdiction #ALE 050873  
Amount Bid: \$ 100.00 per month

**BID #WG18-24 RESPONSE FORM**

Provision of Elevator Maintenance Services

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Hourly Rate for repairs not covered by maintenance agreement:

	<u>Single</u>	<u>Team</u>
Regular Time:	\$ 150. <sup>00</sup>	\$ 200. <sup>00</sup>
Overtime:	\$ 200. <sup>00</sup>	\$ 250. <sup>00</sup>
Sundays & Holidays:	\$ 200. <sup>00</sup>	\$ 250. <sup>00</sup>



**UNITED  
TECHNOLOGIES  
OTIS ELEVATOR**

## ACKNOWLEDGMENT

**Thank you for your order**  
Please refer to our contract number in all correspondence. Address all inquiries to:  
**Otis Elevator Company**

**Exceptions to bid Conditions and Specifications  
Amendment to the contract.**

Contract Number **"ATTACHMENT B"**  
**Amendment to the contract**

Your Project Number  
**WG18-24**

Date Acknowledged  
**5/10/2018**

Sold To  
**Baldwin County Commission**

Job Location  
**Baldwin County Commission  
Elevators under bid number WG18-24**

Thank you for allowing us the opportunity to do business with your company. Enclosed is/are \_\_\_ signed copy(ies) of our Agreement with you dated \_\_\_\_. Our acceptance of this Agreement is conditioned by the following clarifications to its terms, whether specifically noted in the contract or as an additional document incorporated by reference or as a matter of law. It is also understood that our proposal dated \_\_\_ is made a part of this Agreement and shall prevail over any contract specifications in conflict with the equipment to be furnished or our scope of work, and that the terms included herein will be deemed accepted by you upon our commencement of the Work.

**NOTE:** Review of Safety, Drug, Equal Employment Opportunity, Specifications, and Scope of Work Sections is the **Responsibility** of the local office.

**CONTRACT:**

**XXIII**

**Add:**  
Notwithstanding any other provision in the contract to the contrary, neither party shall be liable for any loss, damage or delay due to any cause beyond either party's reasonable control, including but not limited to acts of government, labor disputes, strikes, lock outs, theft, weather, natural or man-made disaster, civil commotion, mischief or act of God. Under no circumstances shall either party be liable for special, indirect, liquidated or consequential damages of any kind.

**XXVII**

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 with a limit of \$2,000,000.

**BID DOC**

**Contractors Public Liability & Property damage & Auto Coverage**

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 with a limit of \$2,000,000.

**Hold Harmless**

Insert **"To the extent caused by an act of Omission of the contractor..."** at beginning of paragraph.

### PAYMENT TERMS

Payments shall be made on a **quarterly** basis, due on or before the last day of the month prior to the billing period, beginning on the Commencement Date.

### WARRANTY

Otis' warranty is limited to the repair or replacement, at Otis' discretion, of defective materials and the correction of defective workmanship within a reasonable time for defects that are reported to Otis during the term of this contract. This warranty excludes damage due to external causes such as fire, water and weather, improper use, misuse, neglect or work by others. THIS WARRANTY IS GIVEN IN LIEU OF ALL OTHER WARRANTIES, EITHER EXPRESSED OR IMPLIED, INCLUDING ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

### SOFTWARE

Otis shall provide its maintenance personnel with the appropriate (as determined by Otis in its sole discretion) tools to enable Otis to troubleshoot, diagnose and maintain the equipment as provided in this Agreement. These tools shall remain the property of Otis and nothing in this Agreement shall be construed to obligate Otis to give, disclose or in any manner transfer such tools to the Customer or any third party.

Any counters, meters, tools, remote monitoring devices, communication devices, resident software or other service equipment ("Otis Peripherals") which we may use or install to deliver service under this Contract remains our property, solely for the use of our employees. Otis Peripherals are not considered as part of the elevator. If this contract or subsequent maintenance service is terminated for any reason, we will be given access to the premises to remove the Otis Peripherals at our expense.

### OCCUPATIONAL HEALTH & SAFETY

We agree to abide by Customer's Safety Policy as long as said policy is not in conflict with our own Safety Policy.

Otis agrees to accept liability for the cost of penalties incurred by you pursuant to governing Occupational Health & Safety acts that result from our acts or omissions on the condition that the cost of any similar penalties imposed on Otis because of your acts or omissions or anyone employed by you shall be borne by you.

### SEARCHED AND TESTS

Otis supports your efforts in attempting to maintain a safe, healthy and productive working environment; however, we cannot agree to authorize any party to search our employees or require our employees to submit to any tests. Otis will take appropriate action in the event that you advise us of any action by any of our employees that is contrary to the maintenance of a safe, healthy and productive workplace.

### SAFE ACCESS

Customer agrees to provide Otis with unrestricted ready and safe access to all areas of the building in which any part of the Units are located and to keep all machine rooms and pit areas free from water, stored materials and excessive debris.

### WORK EXCLUDED

Otis is not required to alter, update, modernize or install new attachments to any units, whether or not recommended or directed by insurance companies or governmental authorities.

Otis will not be responsible for car enclosures (including but not limited to, wall panels, door panels, car gates, plenum chambers, hung ceilings, lighting, light diffusers, light tubes and bulbs, handrails, mirrors and floor coverings), rail alignment, when affected by building compression or shifting hoistway enclosures, hoistway gates, hoistway inserts and brackets, mainline disconnect switches, doors, door frames, sills, swing door hinges and closing devices, hydraulic cylinders, plungers, buried piping, escalator balustrades, lighting and wedge guards. Otis will also not be responsible for computer and microcomputer devices, such as terminal keyboards and display units, that are not exclusively dedicated to the elevator system, telephones, intercoms, heat or smoke sensors or communications or safety signaling equipment not installed by Otis, or instructions or warnings in connection with use by passengers.

### Obsolescence

Otis will not be required: (i) to make any tests other than that as specifically set forth herein; (ii) to make any replacements with parts of a different design or type; (iii) to make any changes in the existing design of the Units; (iv) to alter, update, modernize or install new attachments to any Units, whether recommended or directed by governmental authorities or by any third party; (v) to make repairs or replacements necessitated by failures detected during or due to testing of the Units or buried or unexposed hydraulic

cylinders or piping and (vi) to replace or repair any component or system utilizing obsolete or discontinued parts, including parts for which the original design is no longer manufactured by the original equipment manufacturers, or parts where the original item has been replaced by an item of different design or is replaceable only by fabrication; (vii) to provide reconditioned or used parts; (viii) to make any replacements, renewals, or repairs necessitated by reason of any cause beyond our control including, but not limited to, fire, explosion, theft, floods, water, weather, earthquake, vandalism, misuse, abuse, mischief, or repairs by others. You assume responsibility for the cost of correcting all Elevator Code violations existing on the date we enter into this.

You are responsible for complying with all regulations, including but not limited to those related to seismic activity and floodplains, regarding the geologic conditions of the site where the equipment will be installed.