



DONALD L. WOLFE, Director

COUNTY OF LOS ANGELES

DEPARTMENT OF PUBLIC WORKS

"To Enrich Lives Through Effective and Caring Service"

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December 19, 2006

IN REPLY PLEASE

REFER TO FILE: **AS-0**
001217
Amendment 1

The Honorable Board of Supervisors
County of Los Angeles
383 Kenneth Hahn Hall of Administration
500 West Temple Street
Los Angeles, CA 90012

Dear Supervisors:

**ELEVATOR MODERNIZATION AND MAINTENANCE – HEADQUARTERS
SUPERVISORIAL DISTRICT 5
3 VOTES**

IT IS RECOMMENDED THAT YOUR BOARD:

Approve assignment of Contract No. 001217 entitled Elevator Modernization and Maintenance – Headquarters for elevator maintenance services at Public Works Headquarters from Otis Elevator Company, a corporation, the successor in interest of the prior contractor, Amtech Elevator Services, a corporation, to NAES Acquisition Corporation, d.b.a. Amtech Elevator Services, as assignee. This contract will continue until July 27, 2009.

PURPOSE/JUSTIFICATION OF RECOMMENDED ACTION

On June 11, 2002, Item 50, your Board awarded Contract No. 001217 to Amtech Elevator Services (Amtech), a corporation. The contract required Amtech to modernize our Headquarters elevators and provide maintenance through July 27, 2009. On August 15, 2003, Otis Elevator Company (Otis) purchased substantially all of the assets of Amtech. Subsequently, Otis assigned Contract No. 001217 to its affiliate NAES Acquisition Corporation (NAES). NAES is a wholly owned subsidiary of Otis and is doing business as Amtech Elevator Services.

Due to the changes in staff at Amtech and Otis, there was a delay in retrieving the required documents for the assignment. Additionally, because of a new Board policy that took effect on December 6, 2005, new forms were required.

NAES has expressly agreed to perform the Contract in accordance with its specifications, terms, conditions, and prices as well as being subject to all duties and liabilities under the Contract. Neither Otis nor NAES have any negative reports, or otherwise, in the County Contractor Database. NAES has provided proof of insurance in accordance with the Contract. With these assurances, Public Works recommends that your Board approve assignment of the Contract to NAES Acquisition Corporation, d.b.a. Amtech Elevator Services.

Implementation of Strategic Plan Goals

This action is consistent with the County Strategic Plan Goal of Organizational Effectiveness as the contractor's expertise allows for effectively providing services in a timely, effective, and responsive manner.

FISCAL IMPACT/FINANCING

There will be no impact on net County cost. This assignment will not change the Contract's not-to-exceed five-year maintenance amount of \$209,460 (monthly rate of \$3,491). An additional 15 percent may be augmented for unforeseen additional work within the scope of the Contract. Funds are available in the Public Works' 2006-07 Flood Control District Fund budget to cover the cost of this assignment.

The Contract does not allow for a cost-of-living adjustment.

FACTS AND PROVISIONS/LEGAL REQUIREMENTS

This Contract provides that it may not be assigned without the written consent of the Board of Supervisors. Upon your Board's delegation of authority and approval as to form by County Counsel, the Director, Otis, and NAES Acquisition Corporation, d.b.a. Amtech Elevator Services, will execute the Consent to Assignment (Enclosure).

Public Works has evaluated and determined that the Living Wage Program (County Code Chapter 2.201) does not apply to the contract, which is for services required on a part-time and intermittent basis.

The Honorable Board of Supervisors
December 19, 2006
Page 3

ENVIRONMENTAL DOCUMENTATION

This service is categorically exempt as specified in Section 15301(b) of the State CEQA guidelines.

IMPACT ON CURRENT SERVICES (OR PROJECTS)

Approval of the amendment will continue the current contract services.

CONCLUSION

One adopted copy of this letter is requested.

Respectfully submitted,

DONALD L. WOLFE
Director of Public Works

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Enc.

cc: Chief Administrative Office
County Counsel

ASSIGNMENT, ASSUMPTION, AND CONSENT TO
ASSIGNMENT AND ASSUMPTION FOR CONTRACT NO. 001217
ELEVATOR MODERNIZATION AND MAINTENANCE – HEADQUARTERS

THIS ASSIGNMENT, ASSUMPTION, AND CONSENT TO ASSIGNMENT AND ASSUMPTION (hereinafter referred to as CONSENT), made and entered into this _____ day of _____ 2006, by and among the COUNTY OF LOS ANGELES, a subdivision of the State of California, a body corporate and politic (hereinafter referred to as COUNTY), NAES ACQUISITION CORPORATION, d.b.a. AMTECH ELEVATOR SERVICES, a corporation (hereinafter referred to as NAES), and OTIS ELEVATOR COMPANY, a corporation (hereinafter referred to as OTIS) as successor in interest to AMTECH ELEVATOR SERVICES, a corporation (hereinafter referred to as AMTECH).

WITNESSETH

WHEREAS, Contract No. 001217 (hereinafter referred to as CONTRACT) for Elevator Modernization and Maintenance – Headquarters services was entered into by and between the COUNTY and AMTECH on July 1, 2002, pursuant to the Request for Proposals issued on May 16, 2002, for modernization and maintenance of the elevators. A true and correct copy of the CONTRACT is attached hereto; and

WHEREAS, ABM Industries, Inc., parent company of AMTECH, sold AMTECH'S assets to OTIS; and

WHEREAS, OTIS desires to assign the CONTRACT to its affiliate NAES, which is a wholly owned subsidiary of NORTH AMERICAN ELEVATOR SERVICES COMPANY (hereinafter referred to as AMERICAN ELEVATOR), which is a wholly owned subsidiary of OTIS, and NAES desires the same; and

WHEREAS, under Part II, Section 4.F, of the CONTRACT, any assignment thereof is effective only upon the written consent of the Board of Supervisors; and

WHEREAS, at OTIS'S and NAES'S request, the Director of Public Works wishes to consent to the CONTRACT'S assignment to NAES, upon the terms and conditions hereinafter set forth in this CONSENT.

NOW, THEREFORE, the parties agree as follows:

FIRST: OTIS, as the successor in interest to AMTECH, hereby assigns the CONTRACT to NAES and NAES accepts such assignment and assumes all obligations and liabilities of OTIS and AMTECH under the CONTRACT as further provided herein below. The COUNTY consents to the assignment of the CONTRACT by OTIS to NAES on the express condition that NAES and OTIS each shall be and remain fully liable and responsible to the COUNTY under all the current

terms, conditions, covenants, and agreements of the CONTRACT, which express conditions NAES and OTIS accept and agree to.

SECOND: NAES will maintain the elevators at the rates specified in Part I, Schedule of Prices, at \$209,460 for the five-year maintenance (monthly rate of \$3,491) as quoted in the Schedule of Prices, or such greater sum as the Board may approve.

THIRD: OTIS and NAES agree to execute, acknowledge, and deliver any instruments and take any action as may be necessary to further assure to the COUNTY the rights assigned and the liabilities and obligations assumed hereby, and to preserve and protect this CONSENT, the assignment and assumption and all of the rights, powers, and remedies of the COUNTY provided for herein and under the CONTRACT.

FOURTH: This CONSENT is binding upon the parties hereto and their respective employees; agents; shareholders; officers; directors (in their individual and representative capacities); subsidiaries; predecessors; affiliates; parent corporations, if any; joint venturers; successors; assigns; heirs; executors; administrators; and trustees. Notwithstanding the foregoing, any future assignment of this CONSENT or the CONTRACT remains subject to written approval by the Director pursuant to Section 3 of the CONTRACT, and any sale or merger of a controlling interest in NAES shall be deemed an assignment.

FIFTH: Each of the parties represents that in the execution of this CONSENT, it has consulted with legal counsel of its own selection. Prior to the execution of this CONSENT by each party, the party's attorney reviewed this CONSENT, and advised the party with respect to the consequences of executing this CONSENT.

SIXTH: Each party hereto represents and warrants that the individual executing this CONSENT on its behalf is authorized and has the power to bind said party.

SEVENTH: This CONSENT is and shall be executed under, governed by, and construed in accordance with, the laws of the State of California. NAES and OTIS each agree and consent to the exclusive jurisdiction of the courts of the State of California for all purposes regarding this CONTRACT. NAES and OTIS each further agree with and consent to venue of any action brought hereunder to be exclusively in the COUNTY.

EIGHTH: The delay or failure of a party to exercise any right, power, or privilege hereunder, or failure to strictly enforce any breach, or default shall not constitute a waiver with respect thereto and no waiver of any such right, power,

privilege, breach, or default on any one occasion shall constitute a waiver thereof on any subsequent occasion unless clear and express notice thereof in writing is provided.

NINTH: The Contractor shall have no claim against the COUNTY for payment of any money, or reimbursement of any kind whatsoever for any service provided by the Contractor after the expiration or other termination of this CONTRACT. Should the Contractor receive any such payment, it shall immediately notify the COUNTY and shall immediately repay all such funds to the COUNTY. Payment by the COUNTY for services rendered after expiration or other termination of this CONTRACT, shall not constitute a waiver of the COUNTY'S right to recover such payment from the Contractor. This provision shall survive the expiration, or other termination of this CONTRACT.

TENTH: The Contractor shall notify and provide to its employees, and shall require each subcontractor to notify and provide to its employees, a fact sheet regarding the Safely Surrendered Baby Law, its implementation in the COUNTY, and where and how to safely surrender a baby. The fact sheet is enclosed and is also available on the Internet at www.babysafela.org for printing purposes.

The Contractor acknowledges that the COUNTY places a high priority on the implementation of the Safely Surrendered Baby Law. The Contractor understands that it is the COUNTY'S policy to encourage all COUNTY Contractors to voluntarily post the COUNTY'S "Safely Surrendered Baby Law" poster in a prominent position at the Contractor's place of business. The Contractor will also encourage its Subcontractors, if any, to post this poster in a prominent position in the Subcontractor's place of business. The COUNTY'S Department of Children and Family Services will supply the Contractor with the poster to be used.

ELEVENTH: In no event shall the aggregate total amount of compensation paid to the Contractor exceed the amount of compensation authorized by the Board. Such aggregate total amount is the Maximum Contract Sum.

TWELFTH: The Contractor understands and agrees that only the designated Public Works Contract Manager is authorized to request or order work under this CONTRACT. The Contractor acknowledges that the designated Contract Manager is not authorized to request or order any work that would result in the Contractor earning an aggregate compensation in excess of the Maximum Contract Sum.

THIRTEENTH: The Contractor shall not perform or accept work requests from the Contract Manager or any other person that will cause the Maximum Contract Sum to be exceeded. Contractor shall monitor the balance of the Maximum Contract Sum. When the total of the Contractor's paid invoices, invoices pending payment, invoices yet to be submitted, and services ordered reaches 75 percent of the Maximum Contract Sum, the Contractor shall immediately notify the Contract Manager in writing.

FOURTEENTH: Part II, Section 3.T, Contractor Responsibility and Debarment, has been revised to read as follows:

The Contractor is hereby notified that, in accordance with Chapter 2.202 of the County Code, if the COUNTY acquires information concerning the performance of the Contractor on this or other contracts, which indicates that the Contractor is not responsible, the COUNTY may, in addition to other remedies provided in the CONTRACT, debar the Contractor from bidding or proposing on, or being awarded, and/or performing work on COUNTY contracts for a specified period of time, which generally will not exceed five years but may exceed five years or be permanent if warranted by the circumstances, and terminate any or all existing contracts the Contractor may have with the COUNTY.

The COUNTY may debar a contractor if the Board finds, in its discretion, that the Contractor has done any of the following: (1) violated any term of a contract with the COUNTY or a nonprofit corporation created by the COUNTY; (2) committed any act or omission which negatively reflects on the Contractor's quality, fitness, or capacity to perform a contract with the COUNTY, any other public entity, or a nonprofit corporation created by the COUNTY, or engaged in a pattern or practice, which negatively reflects on same; (3) committed an act or offense, which indicates a lack of business integrity or business honesty; or (4) made or submitted a false claim against the COUNTY or any other public entity.

If there is evidence that the Contractor may be subject to debarment, Public Works will notify the Contractor in writing of the evidence, which is the basis for the proposed debarment and will advise the Contractor of the scheduled date for a debarment hearing before the Contractor Hearing Board.

The Contractor Hearing Board will conduct a hearing where evidence on the proposed debarment is presented. The Contractor and/or the Contractor's representative shall be given an opportunity to submit evidence at that hearing. After the hearing, the Contractor Hearing Board will prepare a proposed decision, which shall contain a recommendation regarding whether the Contractor should be debarred, and, if so, the appropriate length of time of the debarment. The Contractor and Public Works shall be provided an opportunity to object to the tentative proposed decision prior to its presentation to the Board.

After consideration of any objections, or if no objections are submitted, a record of the hearing, the proposed decision and any other recommendation of the Contractor Hearing Board shall be presented to the Board. The Board shall have the right to modify, deny or adopt the proposed decision and recommendation of the Contractor Hearing Board.

If a contractor has been debarred for a period longer than five years, that contractor may, after the debarment has been in effect for at least five years, submit a written request for review of the debarment determination to reduce the period of debarment or terminate the debarment. The COUNTY may, in its discretion, reduce the period of

debarment or terminate the debarment if it finds that the contractor has adequately demonstrated one or more of the following: (1) elimination of the grounds for which the debarment was imposed; (2) a bona fide change in ownership or management; (3) material evidence discovered after debarment was imposed; or (4) any other reason that is in the best interests of the COUNTY.

The Contractor Hearing Board will consider a request for review of a debarment determination only where (1) the Contractor has been debarred for a period longer than five years; (2) the debarment has been in effect for at least five years; and (3) the request is in writing, states one or more of the grounds for reduction of the debarment period or termination of the debarment, and includes supporting documentation. Upon receiving an appropriate request, the Contractor Hearing Board will provide notice of the hearing on the request. At the hearing, the Contractor Hearing Board shall conduct a hearing where evidence on the proposed reduction of debarment period or termination of debarment is presented. This hearing shall be conducted and the request for review decided by the Contractor Hearing Board pursuant to the same procedure as for a debarment hearing.

The Contractor Hearing Board's proposed decision shall contain a recommendation on the request to reduce the period of debarment or terminate the debarment. The Contractor Hearing Board shall present its proposed decision and recommendation to the Board. The Board shall have the right to modify, deny, or adopt the proposed decision and recommendation of the Contractor Hearing Board.

These terms shall also apply to subcontractors of the Contractor.

FIFTEENTH: Part III, C, Assignment, has been revised to read as follows:

Contractor shall not assign its rights or delegate its duties under this CONTRACT, or whether in whole or in part, without the prior written consent of the COUNTY, in its discretion, and any attempted assignment or delegation without such consent shall be null and void. For purposes of this paragraph, COUNTY consent shall require a written amendment to this CONTRACT, which is formally approved and executed by the Contractor and the Board or if delegated by the Board, the Director and Contractor. Any payments by COUNTY to any approved delegate or assignee on any claim under this CONTRACT shall be deductible, at COUNTY'S sole discretion, against the claims which the Contractor may have against the COUNTY.

Shareholders, partners, members, or other equity holders of the Contractor may transfer, sell, exchange, assign, or divest themselves of any interest they may have therein. However, in the event any such sale, transfer, exchange, assignment, or divestment is effected in such a way as to give majority control of the Contractor to any person(s), corporation, partnership, or legal entity other than the majority controlling interest therein at the time of execution of this CONTRACT, such disposition is an assignment requiring the prior written consent of the COUNTY in accordance with applicable provisions of this CONTRACT.

IN WITNESS WHEREOF, the COUNTY has, caused these presents to be subscribed by the Director of Public Works, OTIS, and NAES have subscribed their names by and through their duly authorized officers, as of the day, month, and year first written above.

COUNTY OF LOS ANGELES

By _____
Director of Public Works

APPROVED AS TO FORM:

RAYMOND G. FORTNER, JR.
County Counsel

By _____
Deputy

OTIS ELEVATOR COMPANY

By _____
Its President

By _____
Its Secretary

NAES ACQUISITION
CORPORATION, d.b.a. AMTECH
ELEVATOR SERVICES

By _____
Its President

By _____
Its Secretary