



Elevators Escalators

March 12, 2014

Vic Sabaliauskas
VILLAGE OF OAK PARK
201 South Boulevard
Oak Park, 60302

KONE Inc.
1080 Parkview Blvd.
Lombard, IL 60148
Tel (630) 629-3100
Fax (630) 629-4330
www.kone.com
ramsay.taiym@kone.com

Re: VILLAGE OF OAK PARK

Dear Mr. Sabaliauskas:

KONE Elevators/Escalators is proud to be a supplier member of the U.S. Communities™ Program. In accordance with our discussion, we are pleased to attach our proposal to furnish maintenance service for the vertical transportation referenced in Attachment A.

As a registered participant of the U.S. Communities™ Program, you are eligible to receive special pricing for your elevator maintenance service. This special pricing is not being advertised to the general public; it is limited to U.S. Communities™ members only. In addition to the special pricing, you receive the following benefits:

- Established contract terms which saves time in processing the contract and allows public agencies to negotiate purchases of products and services without the need to bid the work
- Special labor and material billing rates
- KONE Remote (Voice) Monitoring Service available at no additional cost to U.S. Communities members
- eOptimum™ Web-Based Reporting System provided at no charge to U.S. Communities members

Thank you for your interest in U.S. Communities™ and KONE. Should you have any questions, or if I can be of any further assistance, please feel free to call me at (630) 629-3100.

Sincerely,
KONE Inc.

A handwritten signature in cursive script that reads "Ramsay Taiym".

Ramsay Taiym
Sales Representative



KONE participated in the City and County of Denver RFP # ELEVATOR_MAINT_0572U. After thorough evaluation, KONE was awarded Contract PC 94002 on 1/1/09.

The following fifteen (15) pages spell out the terms and conditions of that agreement which become the basis of contract for all units added through the U.S. Communities program. A complete copy of the contract can be viewed online by U.S. Communities members at the following website:

<http://www.uscommunities.org/>

KONE Salesperson: Insert Pages 1-15 of the City and County of Denver
Contract here.



Department of Law
Municipal Operations Section

201 West Colfax Avenue, Dept. 1207
Denver, CO 80202-5332
p: 720-913-3275
f: 720-913-3180
www.denvergov.org/city_attorney

CONTRACT DOCUMENT TRANSMITTAL

TO: City Clerk
FROM: City Attorney
DATE: December 18, 2008

Transmitted herewith for filing is a fully executed counterpart of the following document:

OUTSIDE PARTY(IES): Kone, Inc.
DOCUMENT TITLE: Contract Transmittal Memo
DATED: December 16, 2008
CITY AGENCY: Department of General Services - Purchasing
SUBJECT: Elevator maintenance and service at various buildings throughout the City

Distribution:

Auditor – 1 copy retained
City Attorney's Office – 1 copy
Department of General Services - Purchasing – 1 counterpart

Jeffrey Walter:

Please provide the attached originally executed counterpart to the Second Party, retaining the necessary copies for your use.

Clerk: 12-17-08
Filing No. 08-1153
Ord. No.
Ord. Series:
Control No. PC94002

GDEVEREAUX



CONTRACT APPROVAL AND PREPARATION REQUEST

CITY AND COUNTY OF DENVER

To: Mayor / City Attorney			Heat Ticket Number: 00072305		
Attention: S. Hahn			Contract Administration Officer: Jeffrey Waller		
Date: 2008-09-23			Phone: 720-913-8100		
Initiating Authority: Jim McIntyre			Division: Purchasing Procurement		
Agency Contact Familiar with this Contract: Sherry Grams 7209138113					
1. If Contractor was not selected by lowest competitive bid, cite reasons: RFP Process					
2. City Council approval is required prior to entering this contract: Yes <u>No</u> <u>MD</u>					
3. An ASPEN 15 Form has been forwarded to Budget and Management: No					
4. Contractor Name and Address			5. Contract Control Number: PC94002		
Kone, Inc.			6. Type of Contract: Exp. F Rev. F Orig. T Amend. F		
Denver Branch Office			7. Type of Entity: Corp		
3 Inverness Drive East			8. IRS / SSN #: 362357423		
Englewood, CO 80112			9. Project/Grant ID + Name:		
			10. Ordinance: Series:		
4a. Vendor ID: 0000000296			11. Contract Term: 2009-01-01 to 2011-12-31		
12. Total amount included in this contract request: \$454,365.00					
13. If amendment, previous total: \$0.00					
14. Total with amendments: \$454,365.00					
15. If multiple expenditure authorities are involved, name the authorities: Various City Agencies					
16. Funding sources:					
Fund	Org.	Acct.	Amt.	\$454,365.00	Bus. Unit
Fund	Org.	Acct.	Amt.	\$0.00	Bus. Unit
Fund	Org.	Acct.	Amt.	\$0.00	Bus. Unit
Program		Sub-Class		Project/Grant	
Program		Sub-Class		Project/Grant	
Program		Sub-Class		Project/Grant	
17. Describe the project in general terms:					
Elevator Maintenance and Service at various buildings throughout the City.					
RFP Number ELEVATOR_MAINT_0572U					
18. Supplemental Materials - transmit to City Attorney as e-mail attachment or hardcopy:					
<input type="checkbox"/> F	ASPEN 15	<input type="checkbox"/> F	Cert. of Insurance	<input type="checkbox"/> F	Evidence of Bonding
<input type="checkbox"/> F	RFP	<input type="checkbox"/> F	RFQ	<input type="checkbox"/> F	Scope of Work
<input type="checkbox"/> F		<input type="checkbox"/> F		<input type="checkbox"/> F	Real Estate Desc.
<input type="checkbox"/> F		<input type="checkbox"/> F		<input type="checkbox"/> F	Other
APPROVALS: Add agencies as needed: Public Office Bids. Council on Disabled Career Service Authority			Dept/Agency Head: Jeff Waller for Jim McIntyre		Date: 2008-09-23
			Budget and Mgt.: Joseph dulin		Date: 2008-09-25
			Risk Mgt.: Devron McMillin		Date: 2008-09-25
			Other Authority:		Date:
			Other Authority:		Date:
			Other Authority:		Date:
			Other Authority:		Date:
			Other Authority:		Date:
I hereby certify that the articles or services requested herein are necessary for the operation of this agency, are not available within existing resources, are properly chargeable to the accounts detailed in the attached ASPEN 15 and the quarterly allotments on file with the Auditor in respect to which funds have been pre-encumbered, and that this proposed undertaking is in conformity with the Mayor's policy.					
Jeff Waller for Jim McIntyre			2008-09-23		
Initiating Authority			Date:		
Form: adm42 rev 11/2007			City Attorney <u>[Signature]</u> 12/11/08 Date:		

Form: adm42 rev 11/2007

12/10/08 Revised
✓ Reapproved
(amt)

AGREEMENT

THIS AGREEMENT is made and entered into this 16th day of December, 200__ (the "Effective Date") between the **CITY AND COUNTY OF DENVER**, a municipal corporation of the State of Colorado (the "City") and **KONE, INC.** a Delaware corporation, whose local address is 3 Inverness Drive East, Englewood Colorado 80112 (the "Contractor") (the "Agreement" or "contract").

08-11-50
C.D. 11-80

RECITALS

A. The City wishes to procure elevator maintenance and repair services for City owned buildings from the Contractor.

B. The Contractor is ready, willing, and able to provide these services as set forth below;

NOW, THEREFORE, the parties agree as follows:

1. **SCOPE OF SERVICES:** The Contractor, under the general direction of, and in coordination with City's Director of Purchasing, or other designated supervisory personnel (the "Manager") shall diligently perform the services described on attached **Exhibit A** at the locations listed in **Exhibit B**. The City and Contractor agree that the locations for services described in **Exhibit A** may be expanded to encompass other locations within the City at the same rates as those described in **Exhibit A** based upon the request of the Manager and the acceptance of the Contractor. For any overtime work requested by the City the Contractor shall be entitled to be paid at the rates set out in **Exhibit D**. The City and Contractor agree that the City may reduce or increase the level of maintenance on any elevator or elevators under the Agreement and the parties agree to negotiate in good faith on any corresponding change in compensation in the event of such a change in scope of work. The Contractor agrees that during the term of this Agreement it shall fully coordinate its work with any person or firm under contract with the City doing work or providing services which affect the Contractor's services. The Contractor shall faithfully perform the work described in **Exhibit A** in accordance with the standards of care, skill, training diligence and judgment provided by highly competent individuals and entities that perform services of a similar nature.

2. **TERM:** The Agreement will commence on January 1, 2009 and will expire on December 31, 2011 (the "Term"). Subject to the Manager's prior written authorization, the Contractor shall complete any work in progress as of the expiration date and the Term of the Agreement will extend until the work is completed or earlier terminated by the Manager.

3. **COMPENSATION AND PAYMENT:**

a. **Fee:** The Contractor's sole compensation for its services rendered and costs incurred under the Agreement is **FOUR HUNDRED FIFTY-FOUR THOUSAND THREE HUNDRED AND SIXTY FIVE DOLLARS (\$454,365.00)** and amounts billed may not exceed the rates set forth in **Exhibit A**. Compensation shall be paid on a monthly fee for regular

maintenance and on an hourly basis for all non-regular maintenance work performed by the Contractor.

b. **Reimbursement Expenses:** There are no reimbursable expenses allowed under the Agreement. All of the Contractor's expenses are contained in the rates in Exhibit A.

c. **Invoicing:** Contractor shall provide the City with an invoice in a format and with a level of detail acceptable to the City. The City shall pay any undisputed amounts in accordance with its obligations under the City's Prompt Payment Ordinance.

d. **Maximum Contract Amount:**

(i) Notwithstanding any other provision of the Agreement, the City's maximum payment obligation will not exceed **FOUR HUNDRED FIFTY-FOUR THOUSAND THREE HUNDRED AND SIXTY FIVE DOLLARS (\$454,365.00)** (the "Maximum Contract Amount"). The Contractor acknowledges the City is not obligated to execute an Agreement or any amendments for any further services, including any services performed by Contractor beyond that specifically described in **Exhibit A**. Any services performed beyond those set forth therein are performed at Contractor's risk and without authorization under the Agreement.

(ii) The City's payment obligation, whether direct or contingent, extends only to funds appropriated annually by the Denver City Council, paid into the Treasury of the City, and encumbered for the purpose of the Agreement. The City does not by the Agreement irrevocably pledge present cash reserves for payment or performance in future fiscal years, and the Agreement does not and is not intended to create a multiple-fiscal year direct or indirect debt or financial obligation of the City.

(iii) In the Event progress payment are not made current, this Contractor will be entitled to stop work, without being in breach of the Agreement, until payments are current. At the time the equipment is turned over for use to the City, payments to the Contractor must be current.

4. STATUS OF CONTRACTOR: The Contractor is an independent contractor retained to perform professional or technical services for limited periods of time. Neither the Contractor nor any of its employees are employees or officers of the City under Chapter 18 of the Denver Revised Municipal Code, or for any purpose whatsoever.

5. TERMINATION:

a. The City has the right to terminate the Agreement with cause upon written notice effective immediately, and without cause upon twenty (20) days prior written notice to the Contractor. However, nothing herein shall be construed as giving the Contractor the right to perform services under the Agreement beyond the time when its services become unsatisfactory to the City, and the Contractor shall bear all the risk of providing same.

b. Notwithstanding the preceding paragraph, the City may terminate the Agreement if the Contractor or any of its officers or employees are convicted, plead *nolo contendere*, enter into a formal agreement in which they admit guilt, enter a plea of guilty or otherwise admit culpability to criminal offenses of bribery, kick backs, collusive bidding, bid-rigging, antitrust, fraud, undue influence, theft, racketeering, extortion or any offense of a similar nature in connection with Contractor's business. Termination for the reasons stated in this paragraph is effective upon receipt of notice.

c. If the Agreement is terminated without cause the Contractor will be compensated for work requested and satisfactorily performed. Upon termination of the Agreement by the City, with or without cause, the Contractor will not have any claim against the City by reason of, or arising out of, incidental or relating to termination, except for compensation for work requested and satisfactorily performed as described in the Agreement.

d. If the Agreement is terminated, the City is entitled to and will take possession of all materials, equipment, tools and facilities it owns that are in the Contractor's possession, custody, or control by whatever method the City deems expedient. The Contractor shall deliver all documents in any form that were prepared under the Agreement and all other items, materials and documents that have been paid for by the City to the City. These documents and materials are the property of the City. The Contractor shall mark all copies of work product that are incomplete at the time of termination "DRAFT-INCOMPLETE".

e. If this Agreement is terminated by the Contractor or by the City for cause, the Contractor shall be compensated for, and such compensation shall be limited to: (1) the sum of amounts contained in invoices which it has submitted and which have been approved by the City; (2) the reasonable value to the City of the work which the Contractor performed prior to the date of the termination notice, but which had not yet been approved for payment; and (3) the cost of any work that is needed to accomplish an orderly termination of the work and is approved in writing by the Manager. If this Agreement is terminated without cause by the City the Contractor shall also be compensated for any reasonable costs it has actually incurred in performing services prior to the date of the termination. In the event that all or any part of this Agreement is terminated for any reason, Contractor will immediately document in detail the status of any services in progress. Contractor will provide all assistance reasonably requested by the City in connection with the efficient and orderly performance of the services by the Contractor to the City or any third party designated by the City.

f. Upon termination of this Agreement by the City, the Contractor shall not have any claim against the City by reason of such termination or by reason of any act incidental to termination, except for compensation for work satisfactorily performed as described in this Agreement.

6. EXAMINATION OF RECORDS: Any authorized agent of the City, including the City Auditor or his or her representative, has the right to access and the right to examine any directly pertinent books, documents, papers and records of the Contractor, involving transactions related to the Agreement until the latter of three (3) years after the final payment under the Agreement or expiration of the applicable statute of limitations.

7. PERSONNEL:

a. All key personnel which may be identified in Exhibit A will be dedicated by Contractor to the City. The Contractor shall submit to the Manager a list of any additional personnel who will perform services under this Agreement within thirty (30) days after an Order has been submitted, together with complete resumes and other information describing their ability to perform the services. Such additional personnel must be approved in writing by the Manager.

b. The Parties intend that all key personnel be engaged to perform their specialty for all services required by an Order and that the Contractor shall retain all key personnel for the term of this Agreement. If the Contractor must replace any of its key personnel, it shall notify the Manager in writing of the changes. No such replacement shall be made until the replacement is approved by the Manager, which approval shall not be unreasonably withheld. The Manager shall respond to the Contractor's written notice of replacement within fifteen (15) days of receipt. If the Manager does not respond within that time, the listed replacement personnel shall be deemed approved. If during the term of the Agreement, the Manager determines that the performance of approved key personnel is not acceptable, he shall in his sole and absolute discretion either (a) give the Contractor a reasonable period of time to correct the performance or (b) require the Contractor to replace the personnel as soon as practicable.

c. While the Contractor may retain and contract with subcontractors, no final agreement with any subcontractor shall be entered into without the written consent of the Manager. Requests for approval of subcontractors must be made in writing and include a description of the nature and extent of services to be provided by the subcontractor; the name, address and experience and qualifications of the subcontractor; and any other information which may be requested by the Manager. Because the Contractor's represented qualifications are a consideration to the City in entering into this Agreement, the Manager shall have the right to reject any proposed subcontractor deemed unqualified or unsuitable for any reason to perform the proposed services, and the Manager shall have the right to limit the number of subcontractors. The Manager shall respond to the Contractor's written notice regarding a subcontractor within thirty (30) days of receipt. If the Manager does not respond within that time, the subcontractor shall be deemed approved. Approval of the subcontractor shall not relieve the Contractor of any obligations under this Agreement. Any final agreement with the approved subcontractor must contain a valid and binding provision whereby the subcontractor waives any and all rights to make a claim of payment against any City property arising out of the performance of this Agreement.

d. The Contractor is prohibited from hiring any subcontractor that is currently debarred by the City in accordance with D.R.M.C. § 20-77.

e. Contractor intends to comply with all labor, safety and drug provisions within Agreement to the extent allowable by Contractor's national contract agreement with the I.U.E.C.

8. WHEN RIGHTS AND REMEDIES NOT WAIVED: In no event will any payment or other action by the City constitute or be construed to be a waiver by the City of any breach of

covenant or default that may then exist on the part of the Contractor. No payment, other action, or inaction by the City when any breach or default exists will impair or prejudice any right or remedy available to it with respect to any breach or default. No assent, expressed or implied, to any breach of any term of the Agreement constitutes a waiver of any other breach.

9. INSURANCE:

A. General Conditions: Contractor agrees to secure, at or before the time of execution of this Agreement, the following insurance covering all operations, goods or services provided pursuant to this Agreement. Contractor shall keep the required insurance coverage in force at all times during the term of the Agreement, or any extension thereof, during any warranty period. The required insurance shall be underwritten by an insurer licensed or authorized to do business in Colorado and rated by A.M. Best Company as "A"VIII or better. Each policy shall contain a valid provision or endorsement stating "Should any of the above-described policies be canceled or should any coverage be reduced before the expiration date thereof, the issuing company shall send written notice to Denver Risk Management, 201 West Colfax Avenue, Dept. 1105, Denver, Colorado 80202 by certified mail, return receipt requested. Such written notice shall be sent thirty (30) days prior to such cancellation or reduction unless due to non-payment of premiums for which notice shall be sent ten (10) days prior." If any policy is in excess of a deductible or self-insured retention, the City must be notified by the Contractor. Contractor shall be responsible for the payment of any deductible or self-insured retention. The insurance coverages specified in this Agreement are the minimum requirements, and these requirements do not lessen or limit the liability of the Contractor. The Contractor shall maintain, at its own expense, any additional kinds or amounts of insurance that it may deem necessary to cover its obligations and liabilities under this Agreement.

B. Proof of Insurance: Contractor shall provide a copy of this Agreement to its insurance agent or broker. Contractor may not commence services or work relating to the Agreement before the City receives proof of required insurance by means of certificate of insurance, policy, or other proof of insurance as required by the City's Risk Management department.

C. Named Insureds: For Owner's and Contractor's Protective Liability, Contractor's insurer shall name the City as a Named Insured.

D. Waiver of Subrogation: For all coverages, Contractor's insurer shall waive subrogation rights against the City except in the event of the Owner's negligence.

E. Subcontractor: All sub-consultants, subcontractors, independent contractors, suppliers or other entities providing goods or services required by this Agreement shall be subject to all of the requirements herein and shall procure and maintain the same coverages required of the Contractor. Contractor shall include all such sub-consultants, subcontractors, independent contractors, suppliers or other entities as insureds under its policies or shall ensure that all subconsultants maintain the required coverages. Contractor agrees to provide proof of

insurance for all such subcontractors, independent contractors, suppliers or other entities upon request by the City.

F. Workers' Compensation/Employer's Liability Insurance: Contractor shall maintain the coverage as required by statute for each work location and shall maintain Employer's Liability insurance with limits of \$100,000 for each bodily injury occurrence claim, \$100,000 for each bodily injury caused by disease claim, and \$500,000 aggregate for all bodily injuries caused by disease claims. Contractor expressly represents to the City, as a material representation upon which the City is relying in entering into this Agreement, that none of the Contractor's officers or employees who may be eligible under any statute or law to reject Workers' Compensation Insurance shall effect such rejection during any part of the term of this Agreement, and that any such rejections previously effected, have been revoked as of the date Contractor executes this Agreement.

G. Commercial General Liability: Contractor shall maintain limits of \$1,000,000 for each occurrence, \$1,000,000 for each personal and advertising injury claim, \$2,000,000 products and completed operations for each occurrence, and \$2,000,000 policy aggregate.

H. Automobile Liability: Contractor shall maintain minimum limits of \$1,000,000 combined single limit applicable to all vehicles used in performing services under this Agreement. Auto pollution liability coverage must be carried for any vehicle hauling cargo containing pollutants or contaminants.

I. Excess/Umbrella Liability: Contractor shall maintain limits of \$2,000,000. Aggregate limits must be "per project" or "per location".

J. Professional Liability: For design, engineering or professional services, Contractor shall also maintain minimum limits of \$1,000,000 per claim and \$1,000,000 policy aggregate limit.

K. Owner's and Contractor's Protective Liability: Contractor shall maintain minimum limits of \$1,000,000 covering all work performed under the contract.

L. Additional Provisions:

- (1) For all general liability, the policies must provide the following:
 - (a) If any aggregate limit is reduce by twenty-five percent (25%) or more by paid or reserved claims, the Contractor shall notify the City within ten (10) days and reinstate the aggregates required;
 - (b) Unlimited defense costs in excess of policy limits;
 - (c) Contractual liability covering the indemnification provisions of this Agreement;
 - (d) A severability of interests provision;

- (e) Waiver of exclusion for lawsuits by one insured against another;
- (f) A provision that coverage is primary; and
- (g) A provision that coverage is non-contributory with other coverage or self-insurance provided by the City.

(2) For all general liability, if the policy is a claims-made policy, then the retroactive date must be on or before the contract date or the first date when any goods or services were provided to the City, whichever is earlier.

10. INDEMNIFICATION:

a. The Contractor shall indemnify, defend, release and hold harmless the City, including its elected and appointed officials, employees and agents, against (1) any and all damages, including loss of use, to property, including City property; (2) injuries to or death of any person or persons (including officers, agents and employees of the City); and (3) any and all claims, demands, suits, causes of action, liabilities, fines, penalties, costs, expenses, or proceedings of any kind or nature, including workers' compensation claims, of or by anyone, regardless of the legal theory(ies) upon which premised, in any way resulting from, relating to, or arising out of, directly or indirectly, the acts or omissions of the Contractor or those performing under it in connection with its operations or performance under the Agreement or its use or occupancy of real or use of personal property hereunder, including acts or omissions of affiliates, agents, officers, employees, contractors, representatives, invitees, or licensees of the Contractor or its sub-contractors, subcontractors, or other entities performing under it in connection with its operations or performance under the Agreement. The Contractor's indemnity obligation do not apply to liability or damages proximately caused by the sole negligence of the City's officers, agents and employees.

b. These indemnity obligations cover the City's defense costs should the City, in its sole discretion elect to provide its own defense. The City retains the right to approve counsel, if any, selected by the Contractor to fulfill the foregoing indemnity obligation, which right of approval will not be unreasonably withheld.

c. The indemnity obligation includes litigation fees and expenses, including court filing fees, court costs, arbitration fees or costs, witness fees, and all other fees and costs of investigating and defending or asserting any claim for indemnification under the Agreement, including in each case, attorneys' fees, other professionals' fees and disbursements.

d. Insurance coverage requirements specified in the Agreement in no way lessen or limit the liability of the Contractor under the terms of this indemnification obligation. The Contractor shall obtain, at its own expense, any additional insurance that it deems necessary for the City's protection in the performance of the Agreement.

e. The Contractor shall not be liable for any loss, damage or delay, cause directly or indirectly by embargoes, strikes, lockouts, work interruptions, or other labor dispute, fire, theft, flood, or by any cause beyond Contractor's control. Neither party shall be liable to the other party for incidental, special or consequential damages. Notwithstanding any other provision of

this Agreement, it is the intent of the parties that each party shall only be liable for damages caused by its own negligent acts.

11. CITY INFORMATION:

a. The Contractor acknowledges and accepts that, in performance of all work under the terms of this Agreement, the Contractor may have access to Proprietary Data or confidential information that may be owned or controlled by the City, and that the disclosure of such Proprietary Data or information may be damaging to the City or third parties. The Contractor agrees that all Proprietary Data or confidential information provided or otherwise disclosed by the City to the Contractor shall be held in confidence and used only in the performance of its obligations under this Agreement. The Contractor shall exercise the same standard of care to protect such Proprietary Data and information as a reasonably prudent Contractor would to protect its own proprietary or confidential data. "Proprietary Data" shall mean any materials or information which may be designated or marked "Proprietary" or "Confidential" and provided to or made available to the Contractor by the City. Such Proprietary Data may be in hardcopy, printed, digital or electronic format.

b. Except as expressly provided by the terms of this Agreement, the Contractor agrees that it shall not disseminate, transmit, license, sublicense, assign, lease, release, publish, post on the internet, transfer, sell, permit access to, distribute, allow interactive rights to, or otherwise make available the Proprietary Data or confidential information or any part thereof to any other person, party or entity in any form or media for any purpose other than performing its obligations under this Agreement. The Contractor further acknowledges that by providing this Proprietary Data of confidential information, the City is not granting to the Contractor any right or license to use such data except as provided in this Agreement. The Contractor further agrees not to disclose or distribute to any other party, in whole or in part, the Proprietary Data or confidential information without written authorization from the Manager.

c. The Contractor acknowledges and understands that the Proprietary Data may not be completely free of errors. The Proprietary Data should be used for reference only and should not be relied upon in any other way, and the Contractor is hereby advised to independently verify all work performed in reliance upon the Proprietary Data.

d. The Contractor will inform its employees and officers of the obligations under this Agreement, and all requirements and obligations of the Contractor under this Agreement shall survive the expiration or earlier termination of this Agreement. The Contractor shall not disclose Proprietary Data or confidential information to subcontractors unless such subcontractors are bound by non-disclosure and confidentiality provisions at least as strict as those contained in this Agreement.

e. Notwithstanding any other provision of this Agreement, the City is furnishing Proprietary Data and confidential information on an "as is" basis, without any support whatsoever, and without representation, warranty or guarantee, including but not in any manner limited to, fitness, merchantability or the accuracy and completeness of the Proprietary Data or confidential information. The Contractor is hereby advised to verify its work. The City assumes no liability for any errors or omissions herein. Specifically, the City is not responsible for any costs including, but not limited to, those incurred as a result of lost revenues, loss of use of data,

the costs of recovering such programs or data, the cost of any substitute program, claims by third parties, or for similar costs. If discrepancies are found, the Contractor agrees to contact the City immediately.

12. **COLORADO GOVERNMENTAL IMMUNITY ACT:** In relation to the Agreement, the City is relying upon and has not waived the monetary limitations and all other rights, immunities and protection provided by the Colorado Governmental Act, C.R.S. § 24-10-101, *et seq.*

13. **TAXES, CHARGES AND PENALTIES:** The City is not liable for the payment of taxes, late charges or penalties of any nature, except for any additional amounts that the City may be required to pay under the City's prompt payment ordinance D.R.M.C. § 20-107, *et seq.* The Contractor shall promptly pay when due, all taxes, bills, debts and obligations it incurs performing the services under the Agreement and shall not allow any lien, mortgage, judgment or execution to be filed against City property, including to land, facilities, improvements, or equipment.

14. **ASSIGNMENT; SUBCONTRACTING:** The Contractor shall not voluntarily or involuntarily assign any of its rights or obligations under the Agreement or subcontract performance obligations without obtaining the Manager's prior written consent. Any attempt by the Contractor to assign its rights or obligations or subcontract performance obligations without the Manager's prior written consent will be void and, at the Manager's option, automatically terminates the Agreement. The Manager has sole and absolute discretion whether to consent to any assignment of rights or obligations and subcontracting of performance obligations under the Agreement. In the event of any subcontracting or unauthorized assignment: (i) the Contractor shall remain responsible to the City; and (ii) it shall not create a contractual relationship between the City and sub-contractor or subcontractor or assignee.

15. **INUREMENT:** The rights and obligations of the parties to the Agreement inure to the benefit of and shall be binding upon the parties and their respective successors and assigns, provided assignments are consented to in accordance with the terms of the Agreement.

16. **NO THIRD PARTY BENEFICIARY:** Enforcement of the terms of the Agreement and all rights of action relating to enforcement are strictly reserved to the parties. Nothing contained in the Agreement gives or allows any claim or right of action to any third person or entity. Any person or entity other than the City or the Contractor receiving services or benefits pursuant to the Agreement is an incidental beneficiary only.

17. **NO AUTHORITY TO BIND CITY TO CONTRACTS:** The Contractor lacks any authority to bind the City on any contractual matters. Final approval of all contractual matters that purport to obligate the City must be executed by the City in accordance with the City's Charter and the D.R.M.C.

18. **SEVERABILITY:** Except for the provisions of the Agreement requiring appropriation of funds and limiting the total amount payable by the City, if a court of competent jurisdiction finds any provision of the Agreement or any portion thereof to be invalid, illegal, or unenforceable, the validity of the remaining portions or provisions will not be affected, if the intent of the parties can be fulfilled.

19. **CONFLICT OF INTEREST:**

a. No employee of the City shall have any personal or beneficial interest in the services or property described in the Agreement; and the Contractor shall not hire, or contract for services with, any employee or officer of the City that would be in violation of the City's Code of Ethics, D.R.M.C. §2-51, et seq. or the Charter §§ 1.2.8, 1.2.9, and 1.2.12.

b. The Contractor shall not engage in any transaction, activity or conduct that would result in a conflict of interest under the Agreement. The Contractor represents that it has disclosed any and all current or potential conflicts of interest. A conflict of interest shall include transactions, activities or conduct that would affect the judgment, actions or work of the Contractor by placing the Contractor's own interests, or the interests of any party with whom the Contractor has a contractual arrangement, in conflict with those of the City. The City, in its sole discretion, will determine the existence of a conflict of interest and may terminate the Agreement in the event it determines a conflict exists, after it has given the Contractor written notice describing the conflict.

20. **NOTICES:** Notices concerning termination of the Agreement, alleged or actual violations of the terms of the Agreement, and matters of similar importance must be hand delivered, sent by overnight courier service, mailed by certified mail, return receipt requested, or mailed via United States mail, postage prepaid, if to Contractor at the address first above written, and if to the City at:

Manager of Purchasing
201 West Colfax Avenue, Dept. 304
Denver, Colorado 80202

(Invoices shall be sent directly to individual agencies as specified in Exhibit A)

With a copy of any such notice to:

Attn: Steve Hahn
Denver City Attorney's Office
201 West Colfax Avenue, Department 1207
Denver, Colorado 80202

Notices hand delivered or sent by overnight courier are effective upon delivery; notices sent by certified mail are effective upon receipt; and notices sent by mail are effective upon deposit with the US Postal Service. The parties may designate substitute addresses where or persons to whom notices are to be mailed or delivered; however, these substitutions will not become effective until actual receipt of written notification.

21. **NO DISCRIMINATION IN EMPLOYMENT:** In connection with the performance of work under the Agreement, the Contractor may not refuse to hire, discharge, promote or demote, or discriminate in matters of compensation against any person otherwise qualified, solely because of race, color, religion, national origin, gender, age, military status, sexual orientation, gender variance, marital status, or physical or mental disability. The Contractor shall insert the foregoing provision in all subcontracts hereunder.

22. **COMPLIANCE WITH ALL LAWS:** Contractor shall perform or cause to be performed all services in full compliance with all applicable laws, rules, regulations and codes of the United States and State of Colorado; and with the Charter, ordinances, rules, regulations and Executive Orders of the City and County of Denver.

23. **LEGAL AUTHORITY:** Contractor represents and warrants that it possesses the legal authority, pursuant to any proper, appropriate and official motion, resolution or action passed or taken, to enter into the Agreement. Each person signing and executing the Agreement on behalf of Contractor represents and warrants that he has been fully authorized by Contractor to execute the Agreement on behalf of Contractor and to validly and legally bind Contractor to all the terms, performances and provisions of the Agreement. The City shall have the right, in its sole discretion, to either temporarily suspend or permanently terminate the Agreement if there is a dispute as to the legal authority of either Contractor or the person signing the Agreement to enter into the Agreement.

24. **NO CONSTRUCTION AGAINST DRAFTING PARTY:** The parties and their respective counsel have had the opportunity to review the Agreement, and the Agreement will not be construed against any party merely because the Agreement or any provisions thereof were prepared by a particular party.

25. **AGREEMENT AS COMPLETE INTEGRATION-AMENDMENTS:** The Agreement is the complete integration of all understandings between the parties as to the subject matter of the Agreement. No prior or contemporaneous addition, deletion, or other modification has any force or effect, unless embodied in the Agreement in writing. No subsequent novation, renewal, addition, deletion, or other amendment will have any force or effect unless embodied in a written amendment to the Agreement properly executed by the parties. No oral representation by any officer or employee of the City at variance with the terms of the Agreement or any written amendment to the Agreement will have any force or effect or bind the City. The Agreement is, and any amendments thereto will, be binding upon the parties and their successors and assigns.

26. **WARRANTY:** Contractor represents and warrants that it possesses the legal authority, pursuant to any proper, appropriate and official motion, resolution or action passed or taken, to enter into this Agreement. Each person signing and executing this Agreement on behalf of Contractor represents and warrants that he has been fully authorized by Contractor to execute this Agreement on behalf of Contractor and to validly and legally bind Contractor to all the terms, performances and provisions of this Agreement. The City shall have the right, in its sole discretion, to either temporarily suspend or permanently terminate this Agreement if there is a

dispute as to the legal authority of either Contractor or the person signing the Agreement to enter into this Agreement.

27. **ORDER OF PRECEDENCE:** In the event of any conflicts between the language of the Agreement and the exhibits, the language of the Agreement controls.

28. **INTELLECTUAL PROPERTY RIGHTS:** The City and Contractor intend that all property rights to any and all materials, text, logos, documents, booklets, manuals, references, guides, brochures, advertisements, music, sketches, plans, drawings, prints, photographs, specifications, software, data, products, ideas, inventions, and any other work or recorded information created by the Contractor and paid for by the City pursuant to this Agreement, in preliminary or final forms and on any media whatsoever (collectively, "Materials"), shall belong to the City. The Contractor shall disclose all such items to the City. To the extent permitted by the U.S. Copyright Act, 17 USC § 101, et. seq., the Materials are a "work made for hire" and all ownership of copyright in the Materials shall vest in the City at the time the Materials are created. To the extent that the Materials are not a "work made for hire," the Contractor hereby sells, assigns and transfers all right, title and interest in and to the Materials to the City, including the right to secure copyright, patent, trademark, and other intellectual property rights throughout the world and to have and to hold such copyright, patent, trademark and other intellectual property rights in perpetuity.

29. **SURVIVAL OF CERTAIN PROVISIONS:** The terms of the Agreement and any exhibits and attachments that by reasonable implication contemplate continued performance, rights, or compliance beyond expiration or termination of the Agreement survive the Agreement and will continue to be enforceable. Without limiting the generality of this provision, the Contractor's obligations to provide insurance and to indemnify the City will survive for a period equal to any and all relevant statutes of limitation, plus the time necessary to fully resolve any claims, matters, or actions begun within that period.

30. **ADVERTISING AND PUBLIC DISCLOSURE:** The Contractor shall not include any reference to the Agreement or to services performed pursuant to the Agreement in any of its advertising or public relations materials without first obtaining the written approval of the Manager. Any oral presentation or written materials related to services performed under the Agreement will be limited to services that have been accepted by the City. The Contractor shall notify the Manager in advance of the date and time of any presentation. Nothing in this provision precludes the transmittal of any information to officials of the City, including the Mayor, the Manager, City Council or the Auditor.

31. **CITY EXECUTION OF AGREEMENT:** The Agreement will not be effective or binding on the City until it has been fully executed by all signatories of the City and County of Denver, and if required by Charter, approved by the City Council.

32. **COUNTERPARTS OF THE AGREEMENT:** The Agreement may be executed in counterparts, each of which is an original and constitute the same instrument.

33. **DISPUTES:** All disputes between the City and Contractor regarding the Agreement will be resolved by administrative hearing pursuant to the procedure established by D.R.M.C. § 56-106(b), et seq. For the purposes of that procedure, the City official rendering a final determination shall be the Manager.

34. **GOVERNING LAW; VENUE:** The Agreement will be construed and enforced in accordance with applicable federal law, the laws of the State of Colorado, the Charter and Revised Municipal Code of the City and County of Denver, and the ordinances, regulations and Executive Orders enacted or promulgated pursuant to the Charter and Code. The Charter, Revised Municipal Code and Executive Orders of the City and County of Denver are expressly incorporated into the Agreement. Venue for any legal action relating to the Agreement will be in the District Court of the State of Colorado Second Judicial District.

35. **PROHIBITION AGAINST EMPLOYMENT OF ILLEGAL ALIENS TO PERFORM WORK UNDER THE AGREEMENT:**

a. The Agreement is subject to Article 17.5 of Title 8, Colorado Revised Statutes, and as amended hereafter (the "Certification Statute") and the Contractor is liable for any violations as provided in the Certification Statute.

b. The Contractor certifies by signing this Agreement that, at the time of the execution of the Agreement, the Contractor does not knowingly employ or contract with an illegal alien and that it has participated or attempted to participate in the basic pilot program ("Basic Pilot Employment Verification Program", "Basic Pilot Program" or "BPP"), as defined in § 8-17.5-101(1), C.R.S., in order to confirm the employment eligibility of all employees who are newly hired for employment in the United States.

c. The Contractor shall also comply with the following provisions:

i. It shall not knowingly employ or contract with an illegal alien to perform work under the Agreement.

ii. It shall not enter into a contract with a sub-contractor or subcontractor that fails to certify to the Contractor that the sub-contractor shall not knowingly employ or contract with an illegal alien to perform work under the Agreement.

iii. It has confirmed or attempted to confirm the employment of all employees who are newly hired for employment in the United States through participation in the BPP, and that if it is not accepted into the BPP prior to entering into the Agreement, it shall apply to participate in the BPP every three months until it is accepted into the BPP or the Agreement has been terminated, whichever occurs first.

iv. It is prohibited from using BPP procedures to undertake pre-employment screening of job applicants while performing its obligations under the Agreement.

v. If it obtains actual knowledge that a sub-contractor or subcontractor performing work under the Agreement knowingly employs or contracts with an illegal alien, it will notify such sub-contractor or subcontractor and the City within three days. The Contractor will also then terminate such sub-contractor or subcontractor if within three days

after such notice the sub-contractor or subcontractor does not stop employing or contracting with the illegal alien, unless during such three day period the sub-contractor or subcontractor provides information to establish that the sub-contractor or subcontractor has not knowingly employed or contracted with an illegal alien.

vi. It will comply with any reasonable request made in the course of an investigation by the Colorado Department of Labor and Employment under authority of § 8-17.5-102(5), C.R.S.

36. NATIONAL PRICING WITH US COMMUNITIES.

Pricing for US Communities is found at Exhibit C.

(BALANCE OF PAGE BLANK)

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year first written above.

ATTEST:

CITY AND COUNTY OF DENVER:

By: Stephanie Y. O'Malley
STEPHANIE Y. O'MALLEY,
Clerk and Recorder, Ex-Officio
Clerk of the City and County of Denver

By: John Hickenlooper
JOHN HICKENLOOPER-MAYOR



RECOMMENDED AND APPROVED:

By: [Signature]
Director of Purchasing

APPROVED AS TO FORM:

DAVID R. FINE, Attorney for the
City and County of Denver

By: [Signature]
Assistant City Attorney

REGISTERED AND COUNTERSIGNED:

By: [Signature]
Manager of Finance
Contract Control No. PC 94002

By: [Signature]
Auditor

"CITY"

ATTEST: [If required by Corporate procedures]

By: [Signature]

Title: CONTRACT ANALYST

KONE, INC.

Taxpayer (IRS) I.D. No. 36-2357423

By: [Signature]

Name: Dennis Viehweg
Senior Vice President West Region

Title: Kone, Inc. Contract No. 40083478
"CONTRACTOR"

December 12, 2008

Exhibits A through D Attached

THIRD AMENDATORY AGREEMENT

THIS THIRD AMENDATORY AGREEMENT is made and entered into by and between the **CITY AND COUNTY OF DENVER**, a municipal corporation of the State of Colorado (the "City"), and **KONE, INC.**, a Delaware corporation, whose local address is 3 Inverness Drive East, Englewood, Colorado 80112 (the "Contractor") collectively (the "Parties").

WITNESSETH:

WHEREAS, the Parties entered into an Agreement dated December 16, 2008 and amended the Agreement on April 20, 2010 and October 18, 2010, relating to elevator maintenance and repair services for City owned buildings (the "Agreement"); and

WHEREAS, the Parties wish to amend the Agreement to extend the term, increase the compensation to the Contractor and update other contract language as follows; and

NOW, THEREFORE, in consideration of the premises and the mutual covenants and obligations herein set forth, the Parties agree as follows:

1. Article 2 of the Agreement entitled "TERM" is hereby amended to read as follows:

"2. The Agreement will commence on January 1, 2009 and will expire on December 31, 2013 (the "Term")."

2. Article 3(a) and 3(D)(i) of the Agreement entitled "Fee" and "MAXIMUM CONTRACT AMOUNT" are hereby amended to read as follows:

"3. COMPENSATION AND PAYMENT:

a. **Fee:** The Contractor's sole compensation for its services rendered and costs incurred under the Agreement is **Seven Hundred Fifty-TwoThousand Dollars and No Cents (\$752,000.00)** and amounts billed may not exceed the rates set forth in Exhibit A. Compensation shall be paid on a monthly fee for regular maintenance and on an hourly basis for all non-regular maintenance work performed by the Contractor.

d. MAXIMUM CONTRACT AMOUNT:

(i) Notwithstanding any other provision of the Agreement, the City's maximum payment obligation will not exceed **Seven Hundred Fifty-TwoThousand Dollars and No Cents (\$752,000.00)** (the "Maximum Contract Amount"). The Contractor acknowledges the City is not obligated to execute an Agreement or any amendments for any further services,

including any services performed by Contractor beyond that specifically described in Exhibit A. Any services performed beyond those set forth therein are performed at Contractor's risk and without authorization under the Agreement."

3. Article 35 of the Agreement entitled "PROHIBITION AGAINST EMPLOYMENT OF ILLEGAL ALIENS TO PERFORM WORK UNDER THE AGREEMENT" is hereby amended to read as follows:

"35. NO EMPLOYMENT OF ILLEGAL ALIENS TO PERFORM WORK UNDER THE AGREEMENT:

a. This Agreement is subject to Division 5 of Article IV of Chapter 20 of the Denver Revised Municipal Code, and any amendments (the "Certification Ordinance").

b. The Contractor certifies that:

(1) At the time of its execution of this Agreement, it does not knowingly employ or contract with an illegal alien who will perform work under this Agreement.

(2) It will participate in the E-Verify Program, as defined in § 8-17.5-101(3.7), C.R.S., to confirm the employment eligibility of all employees who are newly hired for employment to perform work under this Agreement.

c. The Contractor also agrees and represents that:

(1) It shall not knowingly employ or contract with an illegal alien to perform work under the Agreement.

(2) It shall not enter into a contract with a subconsultant or subcontractor that fails to certify to the Contractor that it shall not knowingly employ or contract with an illegal alien to perform work under the Agreement.

(3) It has confirmed the employment eligibility of all employees who are newly hired for employment to perform work under this Agreement, through participation in the E-Verify Program.

(4) It is prohibited from using the E-Verify Program procedures to undertake pre-employment screening of job applicants while performing its obligations under the Agreement, and that otherwise requires the Contractor to comply with any and all federal requirements related to use of the E-Verify Program including, by way of example, all program requirements related to employee notification and preservation of employee rights.

(5) If it obtains actual knowledge that a subconsultant or subcontractor performing work under the Agreement knowingly employs or contracts with an illegal alien, it will notify such subconsultant or subcontractor and the City within three (3) days. The Contractor will also then terminate such subconsultant or subcontractor if within three (3) days after such notice the subconsultant or subcontractor does not stop employing or contracting with the illegal alien, unless during such three-day period the subconsultant or subcontractor provides information to establish that the subconsultant or subcontractor has not knowingly employed or contracted with an illegal alien.

(6) It will comply with any reasonable request made in the

course of an investigation by the Colorado Department of Labor and Employment under authority of § 8-17.5-102(5), C.R.S, or the City Auditor, under authority of D.R.M.C. 20-90.3.

d. The Contractor is liable for any violations as provided in the Certification Ordinance. If Contractor violates any provision of this section or the Certification Ordinance, the City may terminate this Agreement for a breach of the Agreement. If the Agreement is so terminated, the Contractor shall be liable for actual and consequential damages to the City. Any such termination of a contract due to a violation of this section or the Certification Ordinance may also, at the discretion of the City, constitute grounds for disqualifying Contractor from submitting bids or proposals for future contracts with the City."

4. A new article numbered 37 of the Agreement is hereby added reading as follows:

37. ELECTRONIC SIGNATURES AND ELECTRONIC RECORDS:

Contractor consents to the use of electronic signatures by the City. The Agreement, and any other documents requiring a signature hereunder, may be signed electronically by the City in the manner specified by the City. The Parties agree not to deny the legal effect or enforceability of the Agreement solely because it is in electronic form or because an electronic record was used in its formation. The Parties agree not to object to the admissibility of the Agreement in the form of an electronic record, or a paper copy of an electronic document, or a paper copy of a document bearing an electronic signature, on the ground that it is an electronic record or electronic signature or that it is not in its original form or is not an original.

5. That **Exhibit A** of the Agreement is amended as follows: Section III, C, entitled **General Conditions of Service**, subsection (i), is hereby deleted and replaced with the following:

(i) 24 hour/7 day week emergency service is required as part of this Agreement. "Emergency" shall be defined as anytime a call for service is placed and the Contractor responds to that call, outside of the hours of 8AM – 5PM, Monday through Friday. In those circumstances, overtime rates may be billed. In the event that the emergency is caused by faulty repair, incomplete repair or lack of regularly scheduled maintenance, no additional charges shall apply. However, in the case of vandalism, damage by delivery vendors, entrapment or other causes beyond control of Contractor, Contractor may charge the repair as an emergency with proper authorization. Contractor shall respond within one (1) hour to calls for emergency service when any elevator is not operating or operating improperly. Travel time for all emergencies may not be billed as a separate line item however, billing may start no earlier than ½ hour before work is started and must stop no more than ½ hour after work has been completed. These charges apply to the technician only and NOT to vehicle or other billing items.

Overtime rates for the City and County of Denver shall be 1 ½ times the rate outlined in Exhibit B of the original contract and NOT the rates outlined in Exhibit C, National Pricing.

6. This Third Amendatory Agreement may be executed in two (2) counterparts, each of which shall be deemed to be an original, and all of which, taken together, shall constitute one and the same instrument.

7. Except as herein amended, this Third Agreement affirmed and ratified in each and every particular.

[SIGNATURE PAGE FOLLOWS]

Contract Control Number: PC94002

Vendor Name: KONE INC

IN WITNESS WHEREOF, the parties have set their hands and affixed their seals at Denver, Colorado as of September 07, 2011.

SEAL



CITY AND COUNTY OF DENVER

ATTEST:

Debra Johnson

Debra Johnson, Clerk and Recorder,
Ex-Officio Clerk of the City and
County of Denver

By

Michael B. Hancock
Michael B. Hancock, Mayor

APPROVED AS TO FORM:

DOUGLAS J. FRIEDNASH, Attorney
for the City and County of Denver

REGISTERED AND COUNTERSIGNED:

By

Edward D. Scholz
Edward D. Scholz, Deputy Chief
Financial Officer

By

Steven J. Hahn
Steven J. Hahn, Assistant City
Attorney

By

Dennis J. Gallagher
Dennis J. Gallagher, Auditor



IN WITNESS WHEREOF, the parties have hereunto set their hands and affixed their seals at Denver, Colorado as of the day first above written.

Contract Control Number: PC94002

Vendor Name: KONE INC

By: James Haugslund

Name: JAMES HAUGSLAND
(please print)

Title: DISTRICT MANAGER
(please print)

ATTEST: [if required]

By: Chris Perlinger

Name: CHRIS PERLINGER
(please print)

Title: DISTRICT SALES MANAGER
(please print)



FIFTH AMENDATORY AGREEMENT

This **FIFTH AMENDATORY AGREEMENT** is made and entered into by and between the **CITY AND COUNTY OF DENVER**, a municipal corporation of the State of Colorado (the "City"), and **KONE, INC.**, a Delaware corporation, whose local address is One Montgomery Court, Moline, IL 61265 (the "Contractor") collectively (the "Parties").

WITNESSETH:

WHEREAS, the Parties entered into an Agreement dated December 16, 2008 and amended the Agreement on April 20, 2010, October 18, 2010, September 7, 2011 and on February 13, 2012, relating to elevator maintenance and repair services for City owned buildings (the "Agreement"); and

WHEREAS, the Parties wish to amend the Agreement to extend the term and increase the compensation to the Contractor as follows; and

NOW, THEREFORE, in consideration of the premises and the mutual covenants and obligations herein set forth, the Parties agree as follows:

2. Article 2 of the Agreement entitled "TERM" is hereby amended to read as follows:

"2. **TERM**: The Agreement will commence on January 1, 2009 and will expire on March 31, 2014 (the "Term")."

3. Article 3(a) and 3(D)(i) of the Agreement entitled "Fee" and "**MAXIMUM CONTRACT AMOUNT**" are hereby amended to read as follows:

"3. **COMPENSATION AND PAYMENT:**

a. **Fee**: The Contractor's sole compensation for its services rendered and costs incurred under the Agreement is **ONE MILLION TWENTY SEVEN THOUSAND DOLLARS and NO CENTS (\$1,027,000.00)** and amounts billed may not exceed the rates set forth in Exhibit A. Compensation shall be paid on a monthly fee for regular maintenance and on an hourly basis for all non-regular maintenance work performed by the Contractor.

d. **MAXIMUM CONTRACT AMOUNT:**

(i) Notwithstanding any other provision of the Agreement, the City's maximum payment obligation will not exceed **ONE MILLION TWENTY SEVEN THOUSAND DOLLARS and NO CENTS (\$1,027,000.00)** (the "Maximum Contract Amount"). The Contractor acknowledges the City is not obligated to execute an Agreement or any amendments for any further services,

including any services performed by Contractor beyond that specifically described in **Exhibit A**. Any services performed beyond those set forth therein are performed at Contractor's risk and without authorization under the Agreement."

3. This Fifth Amendatory Agreement may be executed in two (2) counterparts, each of which shall be deemed to be an original, and all of which, taken together, shall constitute one and the same instrument.

4. Except as herein amended, the Agreement affirmed and ratified in each and every particular.

[SIGNATURE PAGES FOLLOW]

Contract Control Number: GENRL-PC94002-05

Contractor Name: KONE INC

IN WITNESS WHEREOF, the parties have set their hands and affixed their seals at Denver, Colorado as of December 16, 2013.

SEAL



CITY AND COUNTY OF DENVER

ATTEST:

Debra Johnson

Debra Johnson, Clerk and Recorder,
Ex-Officio Clerk of the City and
County of Denver

By

Michael B. Hancock
Michael B. Hancock, Mayor

APPROVED AS TO FORM:

DOUGLAS J. FRIEDNASH, Attorney
for the City and County of Denver

REGISTERED AND COUNTERSIGNED:

By

Beth Machann
Beth Machann, City Controller

By

Steven J. Hahn
Steven J. Hahn, Assistant City
Attorney


By

Dennis J. Gallagher
Dennis J. Gallagher, Auditor



Contract Control Number: GENRL-PC94002-05

Contractor Name: KONE INC

By: 

Name: Jay DIETZ
(please print)

Title: SVP - SERVICE BUSINESS
(please print)

ATTEST: [if required]

By: _____

Name: _____
(please print)

Title: _____
(please print)



PROPOSED SCOPE OF WORK:

KONE Salesperson: Insert Vision created KONE Maintenance Proposal.

PERFORMANCE

KONE will systematically examine, maintain, adjust and lubricate the equipment described above. In addition, unless specifically excluded elsewhere, KONE will repair or replace the following if the repair or replacement is, in KONE's judgment, necessitated by normal wear and tear:

HYDRAULIC ELEVATORS

RELAY LOGIC CONTROL SYSTEM

All control system components.

MICROPROCESSOR CONTROL SYSTEM

All control system components. System performance examinations will be conducted to ensure dispatching and motion control systems are operating properly.

POWER UNIT

Pump, motor, valves and all related parts and accessories.

HYDRAULIC SYSTEM ACCESSORIES

Exposed piping, fittings and accessories between the pumping unit and the jack, jack packing, hydraulic fluid, and any heating or cooling elements installed by the original elevator equipment manufacturer for controlling fluid temperature.

CAR EQUIPMENT

All elevator control system components on the car.

WIRING

All elevator control wiring and all power wiring from the elevator equipment input terminals to the motor.

HOISTWAY AND PIT EQUIPMENT

All elevator control equipment and buffers.

RAILS AND GUIDES

Guide rails, guide shoe gibs, and rollers.

DOOR EQUIPMENT

Automatic door operators, hoistway and car door hangers, hoistway and car door contacts, door protective devices, hoistway door interlocks, door gibs, and auxiliary door closing devices.

MANUAL FREIGHT DOOR EQUIPMENT

Switches, retiring cams, interlocks, guide shoes, sheaves, rollers, chains, sprockets, tensioning devices, and counter-balancing equipment.

POWER FREIGHT DOOR EQUIPMENT

Controller, relays, contactors, rectifiers, timers, resistors, solid state components, door motors, retiring cams, interlocks, switches, guide shoes,

sheaves, rollers, chains, sprockets, and tensioning devices.

SIGNALS AND ACCESSORIES

Car operating panels, hall push button stations, hall lanterns, emergency lighting, car and hall position indicators, lobby control panels, car operating panels, fireman's service equipment and all other signal, and accessory facilities furnished and installed as an integral part of the elevator equipment. Re-lamping of signal fixtures is included only during KONE's systematic examinations. Service requests related to re-lamping of signal fixtures will be considered billable.

HOURS OF SERVICE

All work covered under this Agreement is to be performed during the regular working hours of regular working days of the elevator trade, unless otherwise indicated herein.

SERVICE REQUESTS (CALLBACKS)

In addition to preventive maintenance, this Agreement covers minor adjustment service requests during the regular working hours of regular working days of the elevator trade, unless otherwise indicated herein. Service requests are defined as minor adjustments, corrections or entrapments that require immediate attention and are not caused by reasons beyond KONE's control. Service requests that require more than one technician or more than two hours to complete will be scheduled as a repair during the regular hours of service.

If Purchaser should require, at any time, service requests (unless included above) to be made on overtime, Purchaser will be charged only for the difference between KONE's regular hourly billing rate and KONE's regular overtime billing rate applicable for each overtime hour worked.

TESTS

KONE will perform the following tests on the equipment:

HYDRAULIC ELEVATOR

A pressure relief test and a yearly leakage test.

KONE is not responsible for damages, either to the elevator equipment or to the building, or for any personal injury or death, resulting from this test(s).

GENERAL

KONE shall not be obligated to: perform safety tests other than those specified herein; install new

attachments or make equipment changes or adjustments required by new or retroactive code changes; perform tests or correct outstanding violations or deficiencies prior to the effective date of this agreement; make renewals or repairs necessitated by fluctuations in the building AC power systems, adverse machine room or environmental conditions (including temperature variations below 50 degrees and above 90 degrees Fahrenheit), excessive humidity (greater than 95% non-condensing humidity), water damage, prior water exposure, rust, fire, explosion, acts of God, misuse, vandalism, theft, war, acts of government, labor disputes, strikes, lockouts, or tampering with the equipment by unauthorized personnel; repair or replace parts damaged by negligence, misuse or any other cause beyond its control.

OBSELESENCE

Obsolete items (including, but not limited to, assemblies, parts, components or systems) are excluded from this agreement and are defined as an item for which the original design is no longer regularly manufactured by the OEM or the original design has been replaced with an item of a different design. No exception to this exclusion will be made for items defined as obsolete above simply because they can be custom made or acquired at any price. Obsolete items and the labor to replace them will be at the owner's expense. Any modifications to existing equipment necessary to accommodate replacement components will also be at the owner's expense. KONE will not be required to furnish reconditioned or used parts. Once upgraded by KONE, obsolete items will be covered under this Agreement.

ELEVATOR

Refinishing, repairing, replacing or cleaning of car enclosure, telephones or communication devices, fans, computer monitoring systems, gates and/or door panels, door pull straps, hoistway enclosure, rail alignment, hoistway doors, door frames, sills, hoistway gates, finished flooring, power feeders, switches, their wiring and fusing, car light diffusers, ceiling assemblies and attachments, smoke or heat sensors, fireman's phone devices, intercoms, music systems, media displays, card-readers or other security systems, light tubes and bulbs, pit pumps, emergency power generators, hydraulic cylinder, unexposed piping, disposal of or clean-up of waste oil or any contamination caused by leaks in the hydraulic cylinder or unexposed piping. KONE shall not be obligated to perform or keep records of firefighter's service testing, unless specifically included in this agreement.

REMOTE MONITORING

If your unit is equipped with remote monitoring capabilities, KONE reserves the right to utilize this functionality and the phone line for the unit to collect data related to the use and operation of your equipment.

PURCHASER ASSURANCES

Purchaser agrees to: be solely liable for the proper use of this equipment; furnish KONE with a list of authorized personnel responsible for building operations; provide KONE with a complete set of as-built wiring diagrams; shut down the equipment and notify KONE if the equipment is not functioning properly; notify KONE of any injury or accident in or about the equipment (verbal notification immediately and written notification within three days); perform the monthly firefighter's service testing and keep record of such tests, if required and not specifically included elsewhere herein. Purchaser shall not permit anyone other than KONE to perform work covered under this Agreement.

NON-KONE EQUIPMENT

The Purchaser agrees to procure replacement parts or proprietary diagnostic devices from the original equipment manufacturer when requested by KONE. KONE agrees to reimburse owner for the cost of all parts acquired at KONE's request. Purchaser authorizes KONE to produce single copies of the EPROM and/or ROM chips for each unit for the sole purpose of an archive backup of the embedded software to allow for replacement of a defective or damaged chip. These will be stored on the building premises and the Purchaser retains possession.

PERFORMANCE CLAUSE

Purchaser may, at any time and at Purchaser's expense, call for a mutually agreeable independent elevator consulting firm to evaluate KONE's performance within the scope of this Agreement.

If it is found KONE is not complying with the terms of this Agreement, a detailed report shall be submitted to KONE outlining the specific requirements and a minimum period of sixty (60) days shall be allowed for KONE to correct the non-compliances within the scope of this Agreement.

In the event KONE fails to correct the noted material items within the allowed time, Purchaser shall have the right to terminate this Agreement by giving KONE thirty (30) days written notice. Notwithstanding this right, Purchaser remains obligated to pay all outstanding balances owed KONE.

CONTRACT PERIOD

The service specified will be furnished from the effective date stated herein, and shall remain in effect for a period of five (5) years. After the initial five year period the contract will automatically renew for a successive period(s) of one (1) year

duration from the end of the initial period. After the initial period or any successive renewal period(s) the Purchaser or KONE may cancel by giving each other 90 days notice prior to the expiration of the initial period or any subsequent option period

PERFORMANCE

KONE Inc. will provide the labor to systematically examine and/or lubricate the equipment outlined below.

All lubricants, greases, and wiping cloths will be provided.

Should KONE's examination uncover items, which, in KONE's judgment, require replacement and/or repair, a separate proposal may be prepared for Purchaser's authorization. However, no guarantee is made that any or all items have been or will be found.

HANDICAP LIFTS. MATERIAL LIFTS. WHEELCHAIR LIFTS:

RELAY LOGIC CONTROL SYSTEM

All control system components.

MICROPROCESSOR CONTROL SYSTEM

All control system components. System performance examinations will be conducted to ensure dispatching and motion control systems are operating properly.

KONE First Service technicians will be equipped with necessary field diagnostic and service tools.

POWER UNIT

Valves, pump, motor, and all related parts and accessories.

HYDRAULIC SYSTEM ACCESSORIES

Exposed piping, fittings and accessories between the pumping unit and the jack, jack packing, hydraulic fluid, and any heating or cooling elements installed by the original elevator equipment manufacturer for controlling fluid temperature.

CAR EQUIPMENT

All elevator control system components on the car.

WIRING

All elevator control wiring and all power wiring from the elevator equipment input terminals to the motor.

HOISTWAY AND PIT EQUIPMENT

All elevator control equipment and buffers.

RAILS AND GUIDES

Guide rails, guide shoe gibs, and rollers.

DOOR EQUIPMENT

Automatic door operators, hoistway and car door hangers, hoistway and car door contacts, door protective devices, hoistway door interlocks, door gibs, and auxiliary door closing devices.

MANUAL FREIGHT DOOR EQUIPMENT

Switches, retiring cams, interlocks, guide shoes, sheaves, rollers, chains, sprockets, tensioning devices, and counter-balancing equipment.

POWER FREIGHT DOOR EQUIPMENT

Controller, relays, contactors, rectifiers, timers, resistors, solid state components, door motors, retiring cams, interlocks, switches, guide shoes, sheaves, rollers, chains, sprockets, and tensioning devices.

SIGNALS AND ACCESSORIES

Car operating panels, hall push button stations, hall lanterns, emergency lighting, car and hall position indicators, lobby control panels, car operating panels, fireman's service equipment and all other signal, and accessory facilities furnished and installed as an integral part of the elevator equipment.

LUBRICANTS

KONE will use lubricants compounded under OEM's specifications or equal.

EXAM FREQUENCY

6 examinations per contract year are covered in this agreement.

HOURS OF SERVICE

All work covered under this Agreement is to be performed during regular working hours of regular working days of the elevator trade.

TESTS

KONE will perform the following tests on the equipment:

HYDRAULIC ELEVATOR

A pressure relief test and a yearly leakage test.

KONE is not responsible for damages, either to the elevator equipment or to the building, or for any personal injury or death, resulting from this test(s).

EXCLUSIONS

This Agreement does not include hydraulic fluids.

No labor, parts, or supplies, except those specified herein, will be furnished under this Agreement.

KONE shall not be obligated to: perform safety tests other than those specified herein; install new attachments or make equipment changes, repairs or adjustments, correct outstanding violations or deficiencies.

REMOTE MONITORING

If your unit is equipped with remote monitoring capabilities, KONE reserves the right to utilize this functionality and the phone line for the unit to collect data related to the use and operation of your equipment.

PURCHASER ASSURANCES

Purchaser agrees to: be solely liable for the proper use of this equipment; furnish KONE with a list of authorized personnel responsible for building operations; provide KONE with a complete set of as-built wiring diagrams; shut down the equipment and notify KONE if the equipment is not functioning properly; notify KONE of any injury or accident in or about the equipment (verbal notification immediately and written notification within three days); perform the monthly firefighter's service testing and keep record of such tests, if required and not specifically included elsewhere herein. Purchaser shall not permit anyone other than KONE to perform work covered under this Agreement.

NON-KONE EQUIPMENT

The Purchaser agrees to procure replacement parts or proprietary diagnostic devices from the original equipment manufacturer when requested by KONE. KONE agrees to reimburse owner for the cost of all parts acquired at KONE's request. Purchaser authorizes KONE to produce single copies of the EPROM and/or ROM chips for each

unit for the sole purpose of an archive backup of the embedded software to allow for replacement of a defective or damaged chip. These will be stored on the building premises and the Purchaser retains possession.

PERFORMANCE CLAUSE

Purchaser may, at any time and at Purchaser's expense, call for a mutually agreeable independent elevator consulting firm to evaluate KONE's performance within the scope of this Agreement.

If it is found KONE is not complying with the terms of this Agreement, a detailed report shall be submitted to KONE outlining the specific requirements and a minimum period of sixty (60) days shall be allowed for KONE to correct the non-compliances within the scope of this Agreement.

In the event KONE fails to correct the noted material items within the allowed time, Purchaser shall have the right to terminate this Agreement by giving KONE thirty (30) days written notice. Notwithstanding this right, Purchaser remains obligated to pay all outstanding balances owed KONE.

CONTRACT PERIOD

The service specified will be furnished from the effective date stated herein, and shall remain in effect for a period of five (5) years. After the initial ten year period the contract will automatically renew for a successive period(s) of one (1) year duration from the end of the initial period. After the initial period or any successive renewal period(s) the Purchaser or KONE may cancel by giving each other 90 days notice prior to the expiration of the initial period or any subsequent option period