

## **AGREEMENT**

**THIS AGREEMENT** for elevator maintenance and repair services is made and entered into by and between the **CITY AND COUNTY OF DENVER**, a municipal corporation of the State of Colorado, hereinafter referred to as the "City," and **KONE INC.**, with an address of One Montgomery Court, PO Box 429, Moline IL, 61265, hereinafter referred to as the "Contractor."

The parties agree as follows:

**1. FORM OF AGREEMENT:** This Agreement shall consist of the terms and conditions stated in the following numbered paragraphs. No other documentation related to this Agreement or generated as a result of this Agreement shall form a part of this Agreement unless it is expressly referenced and incorporated herein.

**2. CITY REPRESENTATIVE:** The Manager of General Services ("Manager") is the official City representative and directs all services performed under this Agreement. Communication between the Manager and the Contractor shall be directed through the Manager or such other representative as the Manager shall designate. The Contractor agrees that during the term of this Agreement he shall fully coordinate all services hereunder with the City.

**3. WORK TO BE PERFORMED:**

**A. Preventative and Routine Maintenance:** The Contractor shall diligently undertake, perform and complete all preventative and routine maintenance including all material, labor, supervision, tools, supplies and all other expenses necessary to provide service, preventative maintenance, inspections, adjustments, testing and repairs as set forth in **Exhibit A, Scope of Work**, to the City's satisfaction ("**Preventative and Routine Maintenance**").

**B. Assigned Work:** The Contractor shall diligently undertake, perform and complete work outside of the Preventative and Routine Maintenance described in paragraph 3.A as assigned by written work order ("**Assigned Work**"). As the Manager determines the need and availability of funding for Assigned Work, the City will issue a Work Order (Sample Work Order attached as **Exhibit B**) to the Contractor detailing the nature and extent of the Assigned Work. Work Orders may add or remove facilities from the list of facilities for which Contractor with provide Preventative and Routine Maintenance for a negotiated fixed monthly fee or provide for work in addition to Preventative and Routine Maintenance on a time and materials

basis at the rate specified in Contractor's Pricing Proposal attached as **Exhibit C** . Following receipt of the issued Work Order, the Contractor shall, within three (3) business days and confirm the scope of Assigned Work detailed therein and respond back to the Department as to the Contractor's ability to initiate and complete the Assigned Work in the timeframe specified in the Work Order. The Contractor assumes all responsibility and risks, including any additional work or additional costs, for failure to confirm the completeness and accuracy of the Work Order and the Assigned Work Amount. Confirmation includes, but is not restricted to, inquiries with the Department as to any directions or specifications in the Work Order which are not clear. If the Contractor fails to contact the Department within three (3) business days following receipt of the issued Work Order and state unequivocally that the Contractor is ready and willing to perform the Assigned Work in the manner and timeframe indicated on the Work Order, the City reserves the right to immediately withdraw the issued Work Order. Upon the Contractor executing the Work Order, the City shall finalize and execute the Work Order for the Assigned Services and return a copy of the executed Work Order to the Contractor. The City will not execute the Work Order unless any material changes proposed by the Contractor to the terms of the issued Work Order and/or additions to the Assigned Services Amount are deemed acceptable by the Manager and incorporated into the Work Order and until funding adequate to cover the entire Assigned Services Amount is available.

**C. Work Order Change:** If, after execution of a Work Order and commencement on the Assigned Work, additions, deletions or modifications to the Assigned Work described in the Work Order, along with any associated changes in the Assigned Work Amount, are required a Work Order Change, in substantially the form as set forth in **Exhibit D** attached to this Agreement and incorporated herein by reference, may be issued in accordance to the same standards and procedures prescribed for Work Orders. The Contractor shall promptly and thoroughly review and respond to the proposed changes, in accordance with the same standards and procedures prescribed for Work Orders, and notify the Department that the Contractor is ready and willing to perform the Assigned Work in the manner and timeframe as modified by the Work Order Change. The City will not execute the Work Order Change unless any material changes proposed by the Contractor to the terms of the issued Work Order Change and/or additions to the Assigned Services Amount are deemed acceptable by the Manager and

incorporated into the Work Order Change and until funding adequate to cover the entire Assigned Services Amount, if modified, is available.

**D.** The Contractor shall faithfully perform the services in accordance with the standards of care, skill, training, diligence, and judgment provided by highly competent individuals performing services of a similar nature to those described in the Agreement and in accordance with the terms of the Agreement.

**E.** All records, finding, research, opinions and documentation prepared by the Contractor under this Agreement, if delivered to and accepted by the Manager shall become the property of the City. The Contractor also agrees to allow the City to review any of the procedures used by him/her in performing the services hereunder and to make available for inspection notes and other documents used in the preparation of any of the services required hereunder.

**4. TERM OF AGREEMENT:** The term of the Agreement shall be five (5) years beginning on April 1, 2014 and ending on March 31, 2019. Subject to the Manager's prior written authorization, the Contractor shall complete any Assigned 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. The parties agree that in the performance of the terms, conditions, and requirements of this Agreement by the Contractor, time is of the essence.

**5. FORCE MAJEURE:** The Contractor shall not be liable for any loss, damage or delay, caused directly or indirectly by embargoes, strikes, lockouts, work interruptions, or other labor disputes, fire, theft, flood, or by any cause beyond Contractor's control. Neither party shall be liable for incidental, special or consequential damages. Notwithstanding any other provision of the agreement, it is the intent of the parties that each party shall only be liable for damages caused by its own negligent acts.

**6. COMPENSATION AND PAYMENT:**

**A. Preventative and Routine Maintenance:** The City agrees to pay the Contractor, and the Contractor agrees to accept as full and total compensation for all Preventative and Routine Maintenance a monthly fee for each listed facility in the amount listed in **Contractor's Pricing Proposal** attached as **Exhibit C**.

**B. Assigned Work:** The City agrees to pay the Contractor, and the Contractor agrees to accept as full and total compensation for all assigned work, as agreed in advance, either:

(1) **Monthly Fee:** An agreed to monthly fee for Preventative and Routine Maintenance of facilities not listed in Contractor's Pricing Proposal.

(2) **Time and Materials:** The sum of Contractor's hourly fee of One Hundred and Sixty Dollars and 42/100 (\$160.42) per hour for the actual time spent completing the work as contemporaneously documented, Contractor's documented actual material costs and a markup not to exceed 15% of Contractor's actual cost for materials.

**B.** The Contractor shall submit a monthly statement for completed Preventative and Routine Maintenance as well as for completed Assigned Work. The statement will itemize charges for Preventative and Routine Maintenance by location and provide a description of Assigned Work with a breakdown of hours, materials and markup. Signed work orders with supporting documentation of material costs will be attached to Contractor's statement.

**C. Reimbursable Expenses:** There are no reimbursable expenses allowed under the Agreement. All of the Contractor's expenses are contained in Contractor's rates.

**D. Maximum Contract Amount:**

(1) Notwithstanding any other provision of the Agreement, the City's maximum payment obligation will not exceed **Two Million Dollars and 00/100 (\$2,000,000.00)** (the "Maximum Contract Amount"). 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 in **Exhibit A** are performed at Contractor's risk and without authorization under the Agreement.

(2) 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. The Agreement does not and is not intended to create a multiple-fiscal year direct or indirect debt or financial obligation of the City.

**E. Assigned Work Limit:** The cost of Assigned Work on any single project shall not exceed \$400,000.00.

**7. 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.

**8. TERMINATION OF AGREEMENT:**

**A.** The City has the right to terminate this Agreement, with cause, on Twenty (20) days written notice to the Contractor. However, nothing herein shall be construed as giving the Contractor the right to perform services under this Agreement beyond the time when such services become unsatisfactory to the Manager.

**B.** If this Agreement is terminated by the City with cause, the Contractor shall be compensated for, and such compensation shall be limited to, (1) the sum of the 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 which the Manager approves in writing which he determines is needed to accomplish an orderly termination of the work.

**C.** The City has the right to terminate this Agreement, without cause, on thirty (30) days written notice to the Contractor. However, nothing herein shall be construed as giving the Contractor the right to perform services under this Agreement beyond the time when such services become unsatisfactory to the Manager.

**D.** If this Agreement is terminated by the City without cause, the Contractor shall also be compensated for any reasonable costs it has actually incurred in performing services hereunder prior to the date of the termination.

**E.** If this Agreement is terminated, the City shall take possession of all materials, equipment, tools and facilities owned by the City which the Contractor is using by whatever method it deems expedient, and the Contractor shall deliver to the City all drafts or other documents it has completed or partially completed under this Agreement, together with all other items, materials and documents which have been paid for by the city, and these documents and materials shall be the property of the City. Copies of work product incomplete at the time of

termination shall be marked "DRAFT-INCOMPLETE". The City shall use any and all such incomplete documents or incomplete data at its own risk.

**F.** Upon termination of this Agreement by the City, the Contractor shall have no claim of any kind whatsoever against the City by reason of such termination or by reason of any act incidental thereto, except for compensation for work satisfactorily performed as described herein.

**9. WHEN RIGHTS AND REMEDIES NOT WAIVED:** In no event shall any payment by the City hereunder constitute or be construed to be a waiver by the City of any breach of term, covenant, or condition or any default which may then exist on the part of the Contractor, and the making of any such payment when any such breach or default shall exist shall not impair or prejudice any right or remedy available to the City with respect to such breach or default; and no assent, expressed or implied, to any breach of any one or more terms, covenants, or conditions of the Agreement shall be construed as a waiver of any succeeding or other breach.

**10. INDEMNIFICATION:**

**A.** To the fullest extent permitted by law, the Contractor hereby agrees to defend, indemnify, reimburse and hold harmless City, its appointed and elected officials, agents and employees for, from and against all liabilities, claims, judgments, suits or demands for damages to persons or property arising out of, resulting from, or related to the work performed under this Agreement that are due to the negligence or fault of the Contractor or the Contractor's agents, representatives, subcontractors, or suppliers ("Claims"). This indemnity shall be interpreted in the broadest possible manner consistent with the applicable law to indemnify the City.

**B.** Contractor's duty to defend and indemnify City shall arise at the time written notice of the Claim is first provided to City regardless of whether suit has been filed and even if Contractor is not named as a Defendant.

**C.** Contractor will defend any and all Claims which may be brought or threatened against City and will pay on behalf of City any expenses incurred by reason of such Claims including, but not limited to, court costs and attorney fees incurred in defending and investigating such Claims or seeking to enforce this indemnity obligation. Such payments on behalf of City shall be in addition to any other legal remedies available to City and shall not be considered City's exclusive remedy.

**D.** Insurance coverage requirements specified in this Agreement shall 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.

**E.** This defense and indemnification obligation shall survive the expiration or termination of this Agreement.

**11. EXAMINATION OF RECORDS:** The Contractor agrees that any duly authorized representative of the City, including the City Auditor or his representative, shall, until the expiration of three (3) years after the final payment under this Agreement, have access to and the right to examine any directly pertinent books, documents, papers and records of the Contractor, involving transactions related to this Agreement.

**12. NO AUTHORITY TO BIND CITY TO CONTRACTS:** The Contractor has no authority to bind the City on any contractual matters. Final approval of all contractual matters which obligate the City must be by the City, as required by Charter and ordinance.

**13. VENUE, GOVERNING LAW:** Each and every term, condition, or covenant herein is subject to and shall be construed in accordance with the provisions of Colorado law, the Charter of the City and County of Denver and the ordinances, rules, regulations, and Executive Orders enacted and/or promulgated pursuant thereto. The Charter and Revised Municipal Code of the City and County of Denver, as the same may be amended from time to time, are hereby expressly incorporated into this Agreement as if fully set out herein by this reference. Venue for any action arising hereunder shall be in the District Court for City and County of Denver, Colorado.

**14. USE, POSSESSION OR SALE OF ALCOHOL OR DRUGS:** The Contractor, his or her officers, agents, and employees shall cooperate and comply with the provisions of Executive Order 94 and Attachment A thereto concerning the use, possession or sale of alcohol or drugs. Violation of these provisions or refusal to cooperate with implementation of the policy can result in the City barring the Contractor from City facilities or participating in City operations.

**15. ASSIGNMENT AND SUBCONTRACTING:** The City is not obligated or liable under this Agreement to any party other than the Contractor named herein. The Contractor understands and agrees that he or she shall not assign or subcontract with respect to any of his or

her rights, benefits, obligations or duties under this Agreement except upon prior written consent and approval of the City, which consent or approval may be withheld in the absolute discretion of the City; and in the event any such assignment or subcontracting shall occur, such action shall not be construed to create any contractual relationship between the City and such assignee or subcontractor, and the Contractor herein named shall remain fully responsible to the City according to the terms of this Agreement.

**16. NO WAIVER OF RIGHTS:** No assent, expressed or implied, to any breach of any one or more covenants, provisions or conditions of the Agreement shall be construed as a waiver of any succeeding or other breach.

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

**18. CONFLICT OF INTEREST:** The parties agree that no employee of the City shall have any personal or beneficial interest whatsoever in the services or property described herein and the Contractor further agrees not to hire or contract for services any employee or officer of the City which would be in violation of the Denver Revised Municipal Code, Chapter 2, Article IV, Code of Ethics, or Denver City Charter §§ 1.2.8, 1.2.9, and 1.2.12.

The Contractor agrees that it will not engage in any transaction, activity or conduct which would result in a conflict of interest under this 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, shall determine the existence of a conflict of interest and may terminate this Agreement in the event such a conflict exists after it has given the Contractor written notice which describes the conflict. The Contractor shall have thirty (30) days after the notice is received to eliminate or cure the conflict of interest in a manner which is acceptable to the City.

**19. 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 and maintain coverage including products and completed operations for three (3) years after termination of the Agreement. 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 requiring notification to the City in the event any of the required policies be canceled or non-renewed before the expiration date thereof. Such written notice shall be sent to the parties identified in the Notices section of this Agreement. Such notice shall reference the City contract number listed on the signature page of this Agreement. Said notice shall be sent thirty (30) days prior to such cancellation or non-renewal unless due to non-payment of premiums for which notice shall be sent ten (10) days prior. If such written notice is unavailable from the insurer, Contractor shall provide written notice of cancellation, non-renewal and any reduction in coverage to the parties identified in the Notices section by certified mail, return receipt requested within three (3) business days of such notice by its insurer(s) and referencing the City’s contract number. 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 prior to placement of coverages required under this Agreement. Contractor certifies that the certificate of insurance attached as **Exhibit E**, preferably an ACORD certificate, complies with all insurance requirements of this Agreement. The City requests that the City’s contract number be referenced on the Certificate. The City’s acceptance of a certificate of insurance or other proof of insurance that does not comply with all insurance requirements set

forth in this Agreement shall not act as a waiver of Contractor's breach of this Agreement or of any of the City's rights or remedies under this Agreement. The City's Risk Management Office may require additional proof of insurance, including but not limited to policies and endorsements.

**C. Owner's and Contractor's Protective Liability Insurance:** Contractor's insurer(s) shall name the City and County of Denver, its elected and appointed officials, employees and volunteers as named insureds on an Owner's and Contractor's Protective Liability Policy. The Policy limit will equal the requested General Liability and Excess Liability limits.

**D. Waiver of Subrogation:** For all coverages required under this Agreement, Contractor's insurer shall waive subrogation rights against the City.

**E. Subcontractors and Subconsultants:** All subcontractors and subconsultants (including 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 ensure that all such subcontractors and subconsultants maintain the required coverages. Contractor agrees to provide proof of insurance for all such subcontractors and subconsultants 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 per occurrence for each bodily injury claim, \$100,000 per occurrence 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 a Commercial General Liability insurance policy with 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 aggregate, and \$2,000,000 policy aggregate.

**H. Business Automobile Liability:** Contractor shall maintain Business Automobile Liability with limits of \$1,000,000 combined single limit applicable to all owned, hired and non-owned vehicles used in performing services under this Agreement.

**I. Professional Liability (Errors & Omissions):** Contractor shall maintain limits of \$1,000,000 per claim and \$1,000,000 policy aggregate limit. Policy shall include a severability of interest or separation of insured provision (no insured vs. insured exclusion) and a provision that coverage is primary and non-contributory with any other coverage or self-insurance maintained by the City.

**J. Additional Provisions:**

(1) For Commercial General Liability the policy must provide the following:

(a) That this Agreement is an Insured Contract under the policy;

(b) Defense costs are outside the limits of liability;

(c) A severability of interests or separation of insureds provision (no insured vs. insured exclusion); and

(d) A provision that coverage is primary and non-contributory with other coverage or self-insurance maintained by the City.

(2) For claims-made coverage:

(a) 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

(3) Contractor shall advise the City in the event any general aggregate or other aggregate limits are reduced below the required per occurrence limits. At their own expense, and where such general aggregate or other aggregate limits have been reduced below the required per occurrence limit, the Contractor will procure such per occurrence limits and furnish a new certificate of insurance showing such coverage is in force.

**20. COLORADO GOVERNMENTAL IMMUNITY ACT:** The parties hereto understand and agree that the City is relying upon, and has not waived, the monetary limitations and all other rights, immunities and protection provided by the Colorado Governmental Immunity Act, C.R.S. § 24-10-101, *et seq.*

**21. NO THIRD PARTY BENEFICIARY:** It is expressly understood and agreed that enforcement of the terms and conditions of this Agreement, and all rights of action relating

to such enforcement, shall be strictly reserved to the City and the Contractor, and nothing contained in this Agreement shall give or allow any such claim or right of action by any other or third person on such Agreement, including but not limited to subcontractors and suppliers. It is the express intention of the City and the Contractor that any person other than the City or the Contractor receiving services or benefits under this Agreement shall be deemed to be an incidental beneficiary only.

**22. DISPUTES:** All disputes of whatsoever nature between the City and Contractor regarding this Agreement shall be resolved by administrative hearing, pursuant to the procedure established by Denver Revised Municipal Code, Section 56-106. For the purpose of that procedure, the City official rendering a final determination shall be the City representative identified in Paragraph 2 hereof.

**23. TAXES, CHARGES AND PENALTIES:** The City shall not be liable for the payment of taxes, late charges or penalties of any nature, except as required by Denver's Revised Municipal Code.

**24. TOBACCO PRODUCTS:** There shall be no sale or advertising of tobacco products on the premises or in facilities owned or operated or controlled by the City and County of Denver. "Sale" includes promotional distribution, whether for consideration or not, as well as commercial transactions for consideration. "Advertising" includes the display of commercial and noncommercial promotion of the purchase or use of tobacco products through any medium whatsoever, but does not include any advertising and sponsoring which is a part of a performance or show or event displayed or held in city facilities.

**25. NOTICES:** Notices concerning the termination of this Agreement, notices of alleged or actual violations of the terms or conditions of this Agreement, and other notices of similar importance shall be made:

By Contractor to:     Manager of General Services  
                                  201 West Colfax Avenue  
                                  Denver, Colorado 80202

And by the City to:    KONE INC.  
                                  One Montgomery Court, PO Box 429  
                                  Moline IL, 61265

**26. SURVIVAL OF CERTAIN PROVISIONS:** The parties understand and agree that all terms, conditions and covenants of this Agreement, together with any exhibits and attachments hereto, any or all of which by reasonable implication, contemplate continued performance or compliance beyond the expiration or termination of this Agreement (by expiration of the term or otherwise), shall survive such expiration or termination and shall continue to be enforceable as provided herein. Without limiting the generality of the foregoing, the Contractor's obligations for the provision of insurance and for indemnity to the City shall 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.

**27. PARAGRAPH HEADINGS:** The captions and headings set forth herein are for convenience of reference only, and shall not be construed so as to define or limit the terms and provisions hereof.

**28. SEVERABILITY:** It is understood and agreed by the parties hereto that if any part, term, or provision of this Agreement, except for the provisions of this Agreement requiring prior appropriation of funds and limiting the total amount payable by the City, is by the courts held to be illegal or in conflict with any law of the State of Colorado, the validity of the remaining portions or provisions shall not be affected, and the rights and obligations of the parties shall be construed and enforced as if the Agreement did not contain the particular part, term, or provision held to be invalid.

**29. AGREEMENT AS COMPLETE INTEGRATION-AMENDMENTS:** This Agreement is intended as the complete integration of all understandings between the parties. No prior or contemporaneous addition, deletion, or other amendment hereto shall have any force or effect whatsoever, unless embodied herein in writing. No subsequent novation, renewal, addition, deletion, or other amendment hereto shall have any force or effect unless embodied in a written amendatory or other Agreement properly executed by the parties. This Agreement and any amendments shall be binding upon the parties, their successors and assigns.

**30. LEGAL AUTHORITY:**

**A.** The Contractor assures and guarantees that he or she possesses the legal authority, pursuant to any proper, appropriate and official motion, resolution or action passed or taken, to enter into this Agreement.

**B.** The person or persons signing and executing this Agreement on behalf of the Contractor do hereby warrant and guarantee that he/she or they have been fully authorized by the Contractor to execute this Agreement on behalf of the Contractor and to validly and legally bind the Contractor to all the terms, performances and provisions herein set forth.

**C.** The City shall have the right, at its option, to either temporarily suspend or permanently terminate this Agreement, if there is a dispute as to the legal authority of either the Contractor or the person signing the Agreement to enter into this Agreement. The City shall not be obligated to pay Contractor for any performance of the provisions of this Agreement after the City has suspended or terminated this Agreement as provided in this Paragraph.

**31. NO CONSTRUCTION AGAINST DRAFTING PARTY:** Each of the Parties acknowledge that each of them and their respective counsel have had the opportunity to review this Agreement and that this Agreement shall not be construed against any Party merely because this Agreement or any of its provisions, have been prepared by a particular Party.

**32. CONTRACT DOCUMENTS; ORDER OF PRECEDENCE:** This Agreement consists of Paragraphs 1 through 36, which precede the signature page, and the following attachments which are incorporated herein and made a part hereof by reference:

<b>Exhibit A</b>	<b>Scope of Services</b>
<b>Exhibit B</b>	<b>Sample Work Order</b>
<b>Exhibit C</b>	<b>Pricing Proposal</b>
<b>Exhibit D</b>	<b>Work Order Change</b>
<b>Exhibit E</b>	<b>Certificates of Insurance / Evidence Coverage</b>
<b>Exhibit F</b>	<b>Prevailing Wage Rates</b>

In the event of (i) an irreconcilable conflict between a provision of Paragraphs 1 through 38, and any of the listed attachments or between provisions of any attachments, such that it is impossible to give effect to both, the order of precedence to determine which document shall control to resolve such conflict, is as follows, in descending order:

- Paragraphs 1 through 36
- Exhibit C**
- Exhibit A**
- Exhibit F**
- Exhibit E**

**Exhibit C**

**Exhibit B**

**Exhibit D**

**33. OWNERSHIP OF WORK PRODUCT:** All plans, drawings, reports, submittals and other documents submitted to the City or its authorized agents by the Contractor shall become and are the property of the City, and the City may, without restriction, make use of such documents and underlying concepts as it sees fit. The Contractor shall not be liable for any damage, which may result from any use of such documents for purposes other than those described in this Agreement.

**34. PAYMENT OF PREVAILING WAGE RATES:**

**A.** Pursuant to Section 20-76 of the Denver Revised Municipal Code, the Contractor and each of its subcontractors shall pay every worker, laborer or mechanic employed by it directly upon the site of the work under this Agreement the full amounts accrued at the time of payment, computed at wage rates not less than those shown on the current prevailing wage rate schedule, **Exhibit F**, for each class of employees included in this Agreement. The wages shall be those prevailing as of the date of this Agreement, and the Contractor shall post in a prominent and easily accessible place, a copy of the wage rates for the positions or positions to which the prevailing wage ordinance applies. All construction workers, mechanics and other laborers shall be paid at least once per week; non-construction workers such as janitorial or custodial workers shall be paid at least twice per month.

**B.** The Contractor shall furnish to the City Auditor or his authorized representative, each week during which work is performed under this Agreement, a true and correct copy of the payroll records of all workers employed to perform the work, to whom the prevailing wage ordinance applies. All such payroll records shall include information showing the number of hours worked by each worker, the hourly pay of such worker, any deductions made from pay, and the net amount of pay received by such worker for the period covered by the payroll. The payroll record shall be accompanied by a sworn statement of the Contractor that the copy is a true and correct copy of the payroll records of all workers performing such work, either for the Contractor or a subcontractor, that payments were made to the workers as set forth in the payroll records, that no deductions were made other than those set forth in such records, and that all workers were paid the prevailing wages as set forth in this Agreement.

C. If the term of this Agreement extends for more than one year, the minimum City prevailing wage rates which shall be paid during any subsequent yearly period or portion thereof shall be the wage rates in effect on the yearly anniversary date of this Agreement which begins such subsequent period. Decreases in prevailing wages subsequent to the date of this Agreement shall not be effective except on the yearly anniversary date of this Agreement. In no event shall any increases in prevailing wages after the first anniversary of this Agreement result in any increased liability on the part of the City and the possibility and risk of any such increase is assumed by the Contractor.

D. If the Contractor or any subcontractor fails to pay such wages as required herein, the City Auditor shall not approve any warrant or demand for payment to the Contractor until the Contractor furnishes to the Auditor evidence satisfactory to the Auditor that such wages so required by this Agreement have been paid. The Contractor may utilize the procedures set out in D.R.M.C. §20-76(d)(4) to satisfy the requirements of this provision.

E. If any worker to whom the prevailing wages are to be paid, employed by the Contractor or any subcontractor to perform work hereunder, has not been or is not being paid a rate of wages required by this Paragraph 34, the Manager of General Services may by written notice to the Contractor, suspend by a stop-work order or terminate the Contractor's services hereunder, or the part of such services performed by such workers. The issuance of a stop-work order shall not relieve the Contractor of any obligations or liabilities to the City under this Agreement, including liability to the City for any extra costs incurred by it in obtaining replacement elevator maintenance and repair services while any such stop-work order is in effect or following termination for such cause.

**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.

**36. CITY EXECUTION OF AGREEMENT:** This Agreement is expressly subject to, and shall not be or become effective or binding on the City until it has been fully executed by all signatories of the City and County of Denver.

**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.

**38. COOPERATION ON CLAIMS:** City agrees to cooperate with Contractor in the investigation and resolution of any claims brought against either of them arising out of this agreement.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

**Contract Control Number:** GENRL-201414653-00

**Contractor Name:** Kone Inc.

IN WITNESS WHEREOF, the parties have set their hands and affixed their seals at Denver, Colorado as of March 24, 2014.

SEAL



**CITY AND COUNTY OF DENVER**

ATTEST:

  
\_\_\_\_\_  
Juan Guzman, Deputy Clerk &  
Recorder

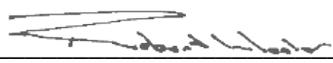
By   
\_\_\_\_\_  
Michael B Hancock, Mayor

APPROVED AS TO FORM:

D. Scott Martinez, Attorney for the  
City and County of Denver

REGISTERED AND COUNTERSIGNED:

By   
\_\_\_\_\_  
Cary Kennedy, Manager of Finance

By   
\_\_\_\_\_  
Robert Wheeler, Assistant City  
Attorney

By   
\_\_\_\_\_  
Dennis J. Gallagher, Auditor

**Contract Control Number:** GENRL-201414653-00

**Contractor Name:** Kone Inc.



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

Name: \_\_\_\_\_

(please print)

**Jeri Blum**  
**Senior Vice President West Region**

Title: \_\_\_\_\_

(please print)

**ATTEST: [if required]**

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

Name: \_\_\_\_\_

(please print)

Title: \_\_\_\_\_

(please print)



To access Exhibits for this contract, please use your login at [www.uscommunities.org](http://www.uscommunities.org).



**DENVER**  
THE MILE HIGH CITY

**General Services**

**Purchasing Division**

201 W. Colfax Avenue, Dept. 304

Denver, CO 80202

P: 720.913.8100

F: 720.913.8101

[www.denvergov.org/purchasing](http://www.denvergov.org/purchasing)

Date: October 10, 2014

Corey Imhoff  
U.S. Communities

**Re: Kone Contract**

Mr. Imhoff,

The intent of this letter is to provide clarification on the language that references a work/dollar limit in the contract with Kone for Elevator Maintenance (GENRL-201414653-00).

Page 4, Section 6.D.1 states: "Notwithstanding any other provision of the Agreement, the City's maximum payment obligation will not exceed **Two Million Dollars and 00/100 (\$2,000,000.00)** (the "Maximum Contract Amount").

This dollar amount reflects the estimated maximum spend for the City and County of Denver throughout the duration of the contract. This dollar limit is specific to the City and County of Denver. For agencies using this contract, their estimated maximum spend may differ and would govern.

Page 5, Section 6.E states: "Assigned Work Limit: The cost of Assigned Work on any single project shall not exceed \$400,000."

This dollar limit is specific to the City and County of Denver. For agencies using this contract, their internal budgetary policies would govern.

Please contact me if you have any further questions.

Sincerely,

Joe Saporito

Senior Buyer

720-913-8118

[joseph.saporito@denvergov.org](mailto:joseph.saporito@denvergov.org)