

**FIRST AMENDMENT TO THE AGREEMENT
FOR ELEVATOR MAINTENANCE SERVICES BETWEEN
THE CITY OF SAN JOSE AND KONE, INC.**

This First Amendment to the Agreement for Elevator Maintenance Services is entered as of June 23, 2009 by the City of San Jose ("City"), a municipal corporation, and Kone, Inc, of San Leandro, California, a Delaware corporation ("Contractor").

RECITALS

WHEREAS, on May 22, 2007, City and Contractor entered into an agreement entitled "Agreement for Elevator Maintenance" ("Agreement"); and

WHEREAS, City and Contractor desire to add maintenance services for the City's employee Parking Garage to service provided under this Agreement; and

WHEREAS, Contractor has received written requests for these services in a manner that was not authorized under the San Jose Municipal Code; and

WHEREAS, City and Contractor desire to enter into a valid amendment to provide for those services;

NOW THEREFORE, the parties agree to amend the Agreement as follows:

1. Exhibit A, "Scope of Services", section entitled "Location of Facility" is amended to add the following facility;

Employee Garage
50 N. 4th Street
San Jose, CA 95113

2. Exhibit A, "Scope of Services, section entitled "General Requirements" is amended to add the following services designated as number 9;

9: Beginning on July 1, 2008 Contractor shall provide Kone Remote Monitoring Service (KRMS) to provide "real time" systems monitoring of all elevators designated within the Agreement.

3. Exhibit F – Entitled "Elevator Schedule" is amended to add elevators located in the Employee Garage designated in the attachment hereto, for maintenance service as set forth in Exhibit A of the Agreement, entitled "Scope of Services. Services shall commence as of February 1, 2008.

9: Contractor shall provide Kone Remote Monitoring Service (KRMS) to provide "real time" systems monitoring of all elevators designated within the Agreement.

RD:BD
06/12/09

4. Exhibit C, "Compensation" is amended to read as set forth in the Revised Exhibit C attached hereto:
5. Exhibit F, "Elevator Schedule" is amended to read as set forth in the Revised Exhibit F attached hereto.
6. Contractor agrees that this Amendment including the Exhibits attached hereto, contain all of the agreements, representations and understandings of the parties hereto, and supersede and replace any previous understandings, commitments, or agreements, whether oral or written.
7. All of the terms and conditions of the original Agreement not modified by this First Amendment shall remain in full force and effect.

WITNESS THE EXECUTION HEREOF on the day and year first written above.

APPROVED AS TO FORM:

CITY OF SAN JOSE, a municipal
corporation

BRIAN DOYLE
Senior Deputy City Attorney

By _____
Name: MARK GIOVANNETTI
Title: Purchasing Officer
Date: _____

KONE, INC., a Delaware corporation

By _____
Name:
Title:
Date: _____

**EXHIBIT C
COMPENSATION
(Revised)**

RATES:

City shall compensate Contractor for the Service of Elevators as set forth in Exhibit A at the rates set forth below.

DATE	ACTIVITY	QUARTERLY RATE	MONTHLY RATE
May 22, 2007 - May 21, 2008	ORIGINAL SCOPE	\$27,492	\$9,164
February 1, 2008 - May 21, 2008	Addition of Garage Elevators	\$34,752	\$11,584
May 22, 2008 – June 30, 2008	Renewal Option 1 Exercised (3.2% CPI)	\$35,864	\$11,955
July 1, 2008 – May 21, 2008	KRMS Emergency Voice Service Initiated (\$25 per elevator – 19 elevators)	\$37,289	\$12,430
May 22, 2009 – May 21, 2010	Renewal Option 2 Exercised (.9% CPI)	\$37,625	\$12,542

A Detailed Breakdown of the Rates for the latest period is set forth in Exhibit F.

**EXHIBIT C
COMPENSATION
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Additional Work:

Any additional repairs which are not covered in this agreement will billed at Kone's standard labor rates and parts less 30% for callouts. All repairs will be additionally addressed with a Kone "Quote Repair Proposal". No work may proceed until after the City has approved the proposal in writing.



Elevators Escalators

CITY OF SAN JOSE				
TIME AND MATERIAL BILLING RATE SCHEDULE (SUBJECT TO CPI ADJUSTMENT)				
Standard (Full) Billing Rates				
BILLING RATES	MECHANIC	HELPER	TEAM	FOREMAN
Straight Time	\$337.69	\$276.91	\$614.61	\$373.74
Overtime 1.5 Rate	\$506.27	\$412.38	\$918.65	\$562.84
Overtime 1.7 Rate	\$573.98	\$466.67	\$1,040.65	\$638.86
Overtime 2.0 Rate	\$657.62	\$533.60	\$1,191.23	\$732.98
Overtime Premium Portion Billing Rates				
BILLING RATES	MECHANIC	HELPER	TEAM	FOREMAN
Overtime Premium (1.5 Rate)	\$168.58	\$137.32	\$305.91	\$187.43
Overtime Premium (1.7 Rate)	\$236.50	\$192.27	\$428.77	\$263.23
Overtime Premium (2.0 Rate)	\$328.81	\$266.82	\$595.63	\$366.49
Billing rates for overtime portion of work otherwise covered under maintenance agreement. Total amount to be based upon KONE's formula for overtime premium portion billing.				
*The above rates are for the initial year of the agreement. These rates have been adjusted for CPI increases for both option renewal years 1 and 2.				

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Maximum Compensation

The maximum amount of compensation to be paid to Contractor, including both payment for professional services and reimbursable expenses, shall not exceed One-Hundred Fifty Thousand dollars (\$150,000). Any hours worked for which payment would result in a total exceeding the maximum amount of compensation set forth herein shall be at no cost to City.

Compensation based upon Performance:

All Payments are based upon City's acceptance of Contractor's performance by the City's Contract Manager. City shall have no obligation to pay unless Contractor has successfully completed and City has approved.

1. Monthly Invoice

Contractor shall submit to City a monthly invoice within fifteen (15) working days of the last day of each month, in arrears, for payment for services performed pursuant to this Agreement. The monthly invoice shall include a statement of work performed during the month. City shall review the monthly invoice submitted by Contractor and within thirty (30) working days of receipt of the invoice, City shall notify Contractor of any discrepancies or deficiencies in said invoice.

2. Payment to Contractor

Except as otherwise provided in this Agreement, City shall make monthly payments within thirty (30) business days of City's approval of Contractor's invoice. If City makes any payments or incurs any costs for which City is entitled to reimbursement from any payment otherwise due to Contractor from City, City may deduct such reimbursement from any payment otherwise due to Contractor from City. City shall submit to Contractor written documentation in support of such deduction upon Contractor's request. In the event City does not deduct such reimbursement from Contractor's payment but submits to Contractor an invoice for reimbursement, Contractor shall reimburse City within thirty (30) days of receipt of such invoice.

CPI Adjustment:

The Contractor's compensation rates shall be subject to adjustment on each anniversary of the performance period. The adjustment shall be calculated as follows:

- A. The base for computing the adjustment shall be the Consumer Price Index for Urban Wage Earners and Clerical Workers (with a base year of 1982-1984=100) for the San Francisco-Oakland-San Jose area, published by the United States Department of Labor Statistics ("Index"),

**EXHIBIT C
COMPENSATION**

(Revised)

which is published most immediately preceding the commencement of the applicable extension term (“Extension Index”), shall be compared with the Index published most immediately preceding the commencement date of the then expiring term (“Beginning Index”). If the Extension Index published has increased over or decreased under the Beginning Index, the monthly compensation rates for the extension term shall be set by multiplying the then expiring term’s monthly compensation rate by a fraction, the numerator of which is the Extension Index and the denominator of which is the Beginning Index. Upon adjustment of the monthly compensation rates, the parties shall immediately execute a written amendment to the Agreement setting forth the new monthly compensation rates, and attach the same as a revised exhibit to the Agreement.

- B. If the Index is changed so that the base year differs from that used as of the month immediately preceding the Agreement’s commencement date, the Index shall be converted in accordance with the conversion factor published by the United States Department of Labor, Bureau of Labor Statistics. If the Index is discontinued or revised during the term of the Agreement such other government index or computation with which it is replaced shall be used in order to obtain substantially the same result as would be obtained if the Index had not been discontinued or revised.
- C. The preceding provision of this Section notwithstanding, the adjustment of any monthly compensation rate for any extension term shall not exceed 7% of the previous term’s monthly compensation rate.
- D. For the purpose of illustration only, if a Beginning Index is 115 and the Extension Index is 124, the monthly compensation rate to be paid during the extension term shall \$ X (the then expiring term’s monthly compensation rate) multiplied by 124/115.

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LIQUIDATED DAMAGES

THE PARTIES HERETO AGREE THAT IT WOULD BE IMPRACTICAL AND EXTREMELY DIFFICULT TO DETERMINE THE ACTUAL DAMAGE TO THE CITY IF CONTRACTOR WERE TO TERMINATE THIS AGREEMENT PRIOR TO EXPIRATION OR OTHERWISE BREACH. IN ADDITION TO THE SERVICES PROVIDED, CITY EXPECTS TO RECEIVE OTHER BENEFIT FROM CONTRACTOR'S SERVICES. THE PARTIES MUTUALLY AGREE THAT LIQUIDATED DAMAGES SET FORTH IN THIS SECTION ARE ACCEPTABLE TO EACH PARTY AND ARE A REASONABLE ESTIMATE OF CITY'S LOSS IF CONTRACTOR FAILS TO COMPLETE SERVICES IN ACCORDANCE WITH THE SCHEDULE OF PERFORMANCE.

BY PLACING THEIR INITIALS BELOW, CITY AND CONTRACTOR ACKNOWLEDGE THAT THE AMOUNTS SET FORTH BELOW HAVE BEEN AGREED UPON AS THE PARTIES' REASONABLE ESTIMATE OF CITY'S DAMAGES.

"CITY"

"CONTRACTOR"

By: _____

By: _____

For each piece of equipment that fails to meet availability requirement, Contractor agrees to pay City as liquidated damages the amount of \$500 per percentage point or portion thereof below the standard of 98.5% availability calculated on a monthly basis. For each service call that falls outside of the required response time, Contractor agrees to pay City as liquidated damages the amount of \$25 per occurrence. Contractor shall pay all such damages in the form of a credit against amounts billed on invoices to City.

EXHIBIT F
SCHEDULE OF ELEVATORS
 (Period: 5/22/09 – 5/21/10)

NO.	BUILDING LOCATION	DAYS & HOURS USED	EQUIPMENT TYPE & USE	MFR	ELEV. ID NUMBER	NO. FLRS.	MINIMUM SERVICE FREQUENCY	KRMS MO. COST	MONTHLY MAINTEN. COST	TOTAL MONTHLY COST
1	City Hall 200 E. Santa Clara St. San Jose, Ca	Mon-Fri 6:00am -11:00pm	Mini Space Traction	Kone	2029355	18	Quarterly	\$25	\$692.00	\$714.00
2	City Hall 200 E. Santa Clara St. San Jose, Ca	Mon-Fri 6:00am -11:00pm	Mini Space Traction	Kone	2029356	18	Quarterly	\$25	\$689.00	\$714.00
3	City Hall 200 E. Santa Clara St. San Jose, Ca	Mon-Fri 6:00am -11:00pm	Mini Space Traction	Kone	2029357	18	Quarterly	\$25	\$689.00	\$714.00
4	City Hall 200 E. Santa Clara St. San Jose, Ca	Mon-Fri 6:00am -11:00pm	Mini Space Traction	Kone	2029358	18	Quarterly	\$25	\$689.00	\$714.00
5	City Hall 200 E. Santa Clara St. San Jose, Ca	Mon-Fri 6:00am -11:00pm	Mini Space Traction	Kone	2029359	18	Quarterly	\$25	\$689.00	\$714.00
6	City Hall 200 E. Santa Clara St. San Jose, Ca	Mon-Fri 6:00am -11:00pm	Mini Space Traction	Kone	2029360	19	Quarterly	\$25	\$689.00	\$714.00
7	City Hall 200 E. Santa Clara St. San Jose, Ca	Mon-Fri 6:00am -11:00pm	Mini Space Traction	Kone	2029361	2	Quarterly	\$25	\$300.00	\$325.00
8	City Hall 200 E. Santa Clara St. San Jose, Ca	Mon-Fri 6:00am -11:00pm	Mini Space Traction	Kone	2029362	2	Quarterly	\$25	\$300.00	\$325.00
9	City Hall 200 E. Santa Clara St. San Jose, Ca	Mon-Fri 6:00am -11:00pm	Mini Space Traction	Kone	2029363	19	Quarterly	\$25	\$689.00	\$714.00
10	City Hall 200 E. Santa Clara St. San Jose, Ca	Mon-Fri 6:00am -11:00pm	Mini Space Traction	Kone	2029364	19	Quarterly	\$25	\$689.00	\$714.00
11	City Hall 200 E. Santa Clara St. San Jose, Ca	Mon-Fri 6:00am -11:00pm	Mini Space Traction	Kone	2029365	20 Roof	Quarterly	\$25	\$689.00	\$714.00

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12	City Hall 200 E. Santa Clara St. San Jose, Ca	Mon-Fri 6:00am -11:00pm	Mini Space Traction	Kone	2029366	3	Quarterly	\$25	\$640.00	\$665.00
13	City Hall 200 E. Santa Clara St. San Jose, Ca	Mon-Fri 6:00am -11:00pm	Mini Space Traction	Kone	2029367	4 Roof	Quarterly	\$25	\$640.00	\$665.00
14	City Hall 200 E. Santa Clara St. San Jose, Ca	Mon-Fri 6:00am -11:00pm	Mini Space Traction	Kone	2029368	4	Quarterly	\$25	\$640.00	\$665.00
15	City Hall 200 E. Santa Clara St. San Jose, Ca	Mon-Fri 6:00am -11:00pm	Mini Space Traction	Kone	2029369	4	Quarterly	\$25	\$640.00	\$665.00
16	City Hall 200 E. Santa Clara St. San Jose, Ca	Mon-Fri 6:00am -11:00pm	Hydraulic Freight	Kone	2029370	2	Quarterly	N/A	\$306.00	\$306.00
17	Employee Garage 50 N. 4 th St. San Jose, CA	Mon-Fri 6:00am -11:00pm	Mini Space Traction	Kone	20237201	8	Monthly	\$25	\$600.00	\$625.00
18	Employee Garage 50 N. 4 th St. San Jose, CA	Mon-Fri 6:00am -11:00pm	Mini Space Traction	Kone	20237202	8	Monthly	\$25	\$600.00	\$625.00
19	Employee Garage 50 N. 4 th St. San Jose, CA	Mon-Fri 6:00am -11:00pm	Mini Space Traction	Kone	20245759	6	Monthly	\$25	\$600.00	\$625.00
20	Employee Garage 50 N. 4 th St. San Jose, CA	Mon-Fri 6:00am -11:00pm	Mini Space Traction	Kone	20245760	6	Monthly	\$25	\$600.00	\$625.00
TOTAL MONTHLY MAINTENANCE COST									\$12,542.00	
ANNUAL COST (X12)									\$150,504.00	
SUPPLEMENTAL FUNDS									\$55,828.00	
MAXIMUM ANNUAL COMPENSATION									\$206,332.00	