

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

This Second Amendment to the Agreement for Elevator Maintenance Services is entered as of _____, 2010 by the City of San Jose ("City"), a municipal corporation, and Kone, Inc., a Delaware corporation authorized to do business in the state of California ("Contractor").

RECITALS

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

WHEREAS, on June 23, 2009, City and Contractor entered into a First Amendment to the Agreement to add elevator maintenance services for the City's Employee Parking Garage to the scope of services provided under this Agreement and correspondingly increase compensation; and

WHEREAS, City and Contractor now wish to modify the Agreement to reflect certain changes in compensation and to increase the number of option years;

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

1. Section 3.2, entitled "Options", is deleted in its entirety and replaced with the following:

City has the right to extend the term of this Agreement for thirteen (13) additional one-year periods (the "Additional Terms"), based upon the same conditions of the Initial Term, subject to adjustments for compensation as set forth in Exhibit C. City shall notify Contractor in writing of its exercise of its option for an Additional Term no less than thirty (30) days prior to the end of the then current Term.

2. Exhibit C (Revised), entitled "Compensation", is amended and replaced in its entirety with Second Revised Exhibit C, attached hereto and incorporated herein.
3. Exhibit F (Revised), entitled "Schedule of Elevators", is amended and replaced in its entirety with Second Revised Exhibit F, attached hereto and incorporated herein.
4. All of the terms and conditions of the Agreement (as modified by the First Amendment) not modified by this Second 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 José
a municipal corporation

Sandra Lee
Deputy City Attorney

By _____
Name: Mark Giovannetti
Title: Purchasing Officer
Date: _____

Kone, Inc.
a Delaware corporation

By 
Name: _____
Title: **Jeff Blum**
Date: **9/28/2010**
Senior Vice President West Region

KONE # 40071954

**SECOND REVISED EXHIBIT C
COMPENSATION**

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
May 22, 2010 – October 21, 2011	Renewal Option 3 Exercised (at the same rates for monthly maintenance as 2009-2010; no CPI increase)	\$37,625	\$12,542
October 22, 2011- May 21, 2011	Pursuant to this Second Amendment, monthly maintenance rates decreased for remainder of Option Year 3	\$26,766	\$8,922

A detailed breakdown of the rates for the period October 22, 2011 through May 21, 2011 is set forth in Second Revised Exhibit F.

**SECOND REVISED EXHIBIT C
COMPENSATION**

Additional Work:

Any additional repairs which are not covered in this Agreement will billed at Contractor's standard labor rates and parts less 30%. 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.

**SECOND REVISED EXHIBIT C
COMPENSATION**

CITY OF SAN JOSE				
Time and Material Billing Rate Schedule				
Standard (Full) Billing Rate				
Billing Rates:	Mechanic	Helper	Team	Foreman
Straight time	\$337.69	\$276.91	\$614.61	\$373.74
Overtime 1.5 Rate: (Rate applicable if work has been previously scheduled to be done after 5:00PM Monday through Friday)	\$506.27	\$412.38	\$918.65	\$562.84
Overtime 1.7 Rate: (Rate applicable if work has not previously been scheduled and occurs after 5:00PM Monday through Friday and/or anytime Saturday)	\$573.98	\$466.67	\$1,040.65	\$638.86
Overtime 2.0 Rate: (Rate applicable if work performed on Sunday or Holidays)	\$657.62	\$533.60	\$1,191.23	\$732.98
Above are the standard billing rates for Additional Work as described above in this Exhibit.				
Overtime Premium Portion Billing Rates				
Billing Rates:	Mechanic	Helper	Team	Foreman
Overtime 1.5 Rate (Rates for scheduled work after 5:00PM Monday through Friday)	\$168.58	\$137.32	\$305.91	\$187.43
Overtime 1.7 Rate (Rates for unscheduled work after 5:00PM Monday through Friday and Saturdays)	\$236.50	\$192.27	\$428.77	\$263.23
Overtime 2.0 Rate (Rates for Sunday or Holidays)	\$328.81	\$266.82	\$595.63	\$366.49
Immediately above are the billing rates for the overtime portion of work (for call-out service) otherwise covered under the Agreement. *The above rates are in effect through May, 21 2011*				

SECOND REVISED EXHIBIT C COMPENSATION

Reimbursable Expenses

The only reimbursable expenses are for parts required for additional repairs not covered under the monthly maintenance services.

Maximum Compensation

The maximum amount of compensation to be paid to Contractor, including both payment for professional services and reimbursable expenses, shall not exceed annually One-Hundred Sixty Four Thousand and One Hundred dollars (\$164,100.00). 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 the work.

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.

SECOND REVISED EXHIBIT C COMPENSATION

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"), 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 be \$ X (the then expiring term's monthly compensation rate) multiplied by 124/115.

Notwithstanding the above, for Option Year Three which commenced May 22, 2010, the compensation rates shall not be subject to CPI adjustment, and shall instead: (1) remain the same as for Option Year Two for the period May 22, 2010 through October 21, 2010, and (2) be decreased to the amount specified in the rates charts on pages C-

**SECOND REVISED EXHIBIT F
SCHEDULE OF ELEVATORS
10/22/10 – 5/21/11**

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	\$482.30	\$507.30
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	\$482.30	\$507.30
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	\$482.30	\$507.30
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	\$482.30	\$507.30
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	\$482.30	\$507.30
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	\$482.30	\$507.30
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	\$210.00	\$235.00
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	\$210.00	\$235.00
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	\$482.30	\$507.30
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	\$482.30	\$507.30
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	\$482.30	\$507.30

**SECOND REVISED EXHIBIT F
SCHEDULE OF ELEVATORS
10/22/10 – 5/21/11**

NO.	BUILDING LOCATION	DAYS & HOURS USED	EQUIPMENT TYPE & USE	MFR	ELEV. NUMBER	NO. FLRS.	MINIMUM SERVICE FREQUENCY	KRMS MO. COST	MONTHLY MAINTEN. COST	MONTHLY MAINTEN. COST
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	\$448.00	\$473.00
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	\$448.00	\$473.00
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	\$448.00	\$473.00
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	\$448.00	\$473.00
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	\$214.20	\$214.20
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	\$420.00	\$445.00
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	\$420.00	\$445.00
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	\$420.00	\$445.00
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	\$420.00	\$445.00
TOTAL MONTHLY MAINTENANCE COST										\$8,922.00