

### 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 for 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:**

**Vendor Name:**

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

SEAL

**CITY AND COUNTY OF DENVER**

ATTEST:

By \_\_\_\_\_

\_\_\_\_\_

APPROVED AS TO FORM:

REGISTERED AND COUNTERSIGNED:

By \_\_\_\_\_

By \_\_\_\_\_

By \_\_\_\_\_



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)

